109-211

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 91.

THE NEW ORLEANS NATIONAL BANKING ASSOCIATION, MRS. ANNA GOODWIN GILMOUR, ET AL., APPELLANTS,

vs.

JOHN I. ADAMS, JAY L. ADAMS, WILLIAM H. REGNAUD, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 11, 1880.

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a UNITED STATES OF AMERICA:

Circuit court of the United States in and for the fifth judicial circuit and district of Louisiana. In equity.

NEW ORLEANS NATIONAL BANKING ASSOCIATION, for the use, etc.,
versus
JOHN I. ADAMS ET ALS. } No. 7925.

Rouse & Grant, solicitors for complainant, appellant; Bayne & Renshaw for heirs of G. Barnsley et als., pl'ffs in cross-bill, appellants; Clay, Knoblock & Hornor & Benedict for Jno. I. Adams et als., defendants, appellees.

TRANSCRIPT OF RECORD OF APPEAL.

Returnable in the Supreme Court of the U. S., sitting at Washington, D. C., on the 2d Monday of October, A. D. 1880.

1 UNITED STATES OF AMERICA:

Circuit court of the United States in and for the fifth circuit and district of Louisiana.

THE NEW ORLEANS NATIONAL BANKING ASSOCIATION, for the use, etc.,
vs.
JOHN I. ADAMS ET ALS. } No. 7925. In equity.

Bill.—Filed June 28th, 1876.

To the honorable the judges of the circuit court of the United States for the fifth circuit and district of Louisiana:

The New Orleans National Banking Association, of New Orleans, a body corporate created under the provisions of the act of Congress approved June 3rd, 1864, now called the national bank act, in liquidation, brings this its bill against Francois Justin Gaudé, Joachim Gaudé, John I. Adams, William H. Renaud, Jerome Gaubert, Marcelin Richard, and
2 Albert N. Cummings, all residents and citizens of the State of Louisiana; Dr. George W. Tucker, Paschal E. Tucker, Sarah L. Tucker, wife of William K. Douglas, lately composing the firm of Tucker Brothers, and William K. Douglas, and T. I. Daunis, all residents and citizens of the State of Louisiana; Jay L. Adams, resident and citizen of the State of New York; William Watson, Christian and Henry Scott Gilmour, executors and trustees of the estate of Thomas C. Gilmour, deceased; and Julia Gilmour, and F. Massey Dawson, her husband, and Murray Gilmour, sole heirs-at-law of said Thomas C. Gilmour; and Mrs. Anna Goodwin Gilmour, widow of Thomas C. Gilmour, Julia Bernard Barnsley, and C. H. Schwartz, her husband, Lucien Barnsley, George Scarborough Barnsley, and George Forest Reid, a minor, represented by C.

H. Schwartz, his prochein ami, the sole heirs-at-law of Godfrey Barnsley, deceased, citizens and residents of the State of Louisiana, for the use and benefit of Nicholas W. Casey, duly appointed and qualified receiver of said bank; and thereupon your orator complains and says:

3 1°. That the Bank of New Orleans was originally created a body corporate under the laws of the State of Louisiana, and carried on the business of banking under said laws until on or about the 1st day of July, 1871, when the said Bank of New Orleans, by due and regular proceedings had and taken under and by authority of the act of Congress approved June 3rd, 1864, called the "national bank act," and of the acts amendatory thereof, changed its character and form of organization from a bank acting under the authority of the laws of said State to that of a national banking association, organized and acting under the authority of said act of Congress, and was converted into a national banking association under the name and style of the New Orleans Banking Association, which last-named association succeeded to all the rights of the said Bank of New Orleans on or about the said 1st day of July, 1871, and became entitled to have and recover all debts and demands due the bank prior to that date.

4 2°. That on or about the 24th day of February, 1860, the said Bank of New Orleans became the holder and owner of a certain promissory note for the sum of five thousand dollars ($5,000), made by Tucker Brothers to the order of Robert Tucker, and by him endorsed. That at the date aforesaid the said George W. Tucker, acting for said Tucker Brothers, as their agent, and for himself, made and executed a certain act of mortgage bearing upon the lands hereinafter described, which mortgage was duly recorded in the mortgage office of the parish of La Fourche, on or about the 24th day of February, 1860, to secure the payment of said note and three others of concurrent rank for a like amount each, said mortgage being made in favor of Robert Tucker and the holder or holders of said notes; that two of said mortgage notes have been paid, but that the note for five thousand dollars held by the bank as aforesaid, which fell due on the 15th day of February, 1861, and the other note for

5 five thousand dollars, which fell due on the 20th day of January, 1861, and was held by said Godfrey Barnsley, were not paid at maturity.

3°. That on or about the 4th day of September, 1866, the said Bank of New Orleans instituted a suit on said note held by it against the said Tucker Brothers, praying for a judgment against them, and a sale of the said mortgaged property to satisfy and pay the same; and on the day of June, 1867, the district court for the parish of La Fourche, in the State of Louisiana, rendered a judgment in favor of the said Bank of New Orleans and against said Tucker Brothers for the full amount of said note, with eight per cent. per annum interest thereon from 15th day of February, 1861, with recognition of the said bank's right of mortgage as aforesaid upon the following described property, to wit:

"A certain tract of land situated in the parish of La Fourche, on the left bank of the Bayou La Fourche, at about four miles below the town of Thibodeaux, measuring seven arpents (more or less) front by eighty arpents in depth, bounded above by lands of J. Rosemond LeBlanc and

6 below by those formerly owned by Tucker & Rose, and now be-

longing to R. & J. H. Tucker, together with all the buildings and improvements thereon."

4°. That a writ of fieri facias was issued on said judgment, under which the sheriff of said parish seized said property, and sold and adjudicated the same to Albert N. Cummings for the price of thirteen thousand and twenty-five ($13,025) dollars, on the 7th day of September, 1867; but the said Cummings being unable to comply with his bid by paying the price of the adjudication in cash, it was agreed by and between the said Tucker Brothers, the Bank of New Orleans, Godfrey Barnsley, J. Gaubert, et als., and Albert N. Cummings, they being then the sole parties in interest, that the said Cummings should be granted time to pay the said price upon the following terms:

It was agreed that out of the purchase price said Cummings should pay one Gaubert and others, in satisfaction of a judgment they held
7 against said Tucker Brothers, which was secured by mortgage and vendor's lien on a part of said lands, the sum of $1,851.10 in installments, the last falling due March 1st, 1869; that out of said purchase-money he should also pay to Godfrey Barnsley the sum of ($4,904.40) four thousand nine hundred and four & $\frac{40}{100}$ dollars, in installments, with 8 % interest per annum from September 7th, 1867, till paid, the last installment falling due May 15th, 1870; and lastly, that he should pay the sum of six thousand two hundred and sixty-nine & $\frac{50}{100}$ ($6,269.50) dollars to said Bank of New Orleans in installments; $2,269.50 thereof was to be paid May 1st, 1868, and $2,000 May 1st, 1869, and $2,000 on May 1st, 1870, each installment to bear interest at eight per cent. from the maturity thereof.

And it was further agreed that the claims of Godfrey Barnsley and the Bank of New Orleans were secured by mortgage on the whole of said tract of land, and that the claims of Gaubert and others were entitled to a mortgage and privilege by preference over them on the lower three arpents.

8 It was also specially agreed that the original mortgage and privilege securing said notes and claims of the Bank of New Orleans and Godfrey Barnsley as aforesaid, recorded in the mortgage office of the parish of La Fourche, on the 24th day of February, 1860, should remain in full force and effect for the security of said claims, and to avoid all doubt as to the effect of the foregoing agreement a present privilege and mortgage were declared to exist, and recognized as resulting from said agreement and as operating against said property, to secure the debts above set forth, which formed a part of the purchase price of the property sold to said Cummings by the sheriff as aforesaid, which said agreement was reduced to writing and executed by all the parties thereto, and made authentic, before Joseph Kleber Gourdain, recorder and ex officio notary public of the parish of La Fourche, State of Louisiana, on the seventh day of September, 1867, and was duly recorded in the office of the recorder of mortgages for said parish of La Fourche on the 12th day of September,
9 1867, in mortgage book No. 5, folio No. 561, where it still remains of record; and the sheriff of said parish made his deed of said property to the said Cummings, and filed the said writ of fieri facias in court with the return that he had adjudicated the said property to said Cummings, who satisfied the price of the adjudication on the terms set forth in said authentic act.

And for greater certainty in this behalf complainant annexes hereto a copy of said authentic act of agreement, marked "Exhibit A" and made part hereof.

5°. And your orator alleges that the debt due the said Gaubert and others firstly above set forth in said agreement has been paid and satisfied, and no longer remains a charge on said property, and that the claims of your orator and the said heirs of Godfrey Barnsley are secured under the registry of said agreement by the vendor's lien and mortgage on said property with preference over the claims and demands of any of the other defendants.

6°. And your orator is informed that the said John I. Adams,
10 William H. Renaud, and Jay L. Adams, composing the firm of John I. Adams & Co., claim to have a mortgage on said property, and that Francois Justin Gaudé and Joachim Gaudé are in possession and claim to be the owners of said property; but orator charges that their interests, if any they have, were acquired subsequent to the 12th day of September, 1867, the date of the registry of its mortgage and vendor's lien.

7°. And your orator is informed that the defendants William Watson Christian and Henry Scott Gilmour, executors, &c., as aforesaid, and Anna Goodwin Gilmour, widow as aforesaid, and Julia Gilmour and F. Massey Dawson, her husband, and Murray Gilmour, claim that said note held by said Godfrey Barnsley belonged to the estate of said Thomas C. Gilmour, deceased, and that said Barnsley acted in the premises as the agent of said executors & trustees.

8°. That the said Albert N. Cummings has failed and neglected to pay the amount of your orator's said claims now due and the claim of the heirs of said Godfrey Barnsley, though due demand has been made upon him for the same.

11 Wherefore and for the reason that your orator is without adequate remedy in the premises at law, it is compelled to resort to a court of equity where such matters are properly cognizable.

Wherefore and to the end that defendants may full, true, and perfect answers make unto your orator's said bill and all the matters and things therein contained, according to the best of their knowledge, information, and belief (but not under oath, the same being expressly waived); that your orator's said mortgage and vendor's lien and privilege may be recognized and established and foreclosed upon said property with priority and preference over all claims of the defendants; that said defendant Albert N. Cummings may be decreed to pay the amount that shall be found due to your orator on his aforesaid claims, and that said property mortgaged as aforesaid may be sold to satisfy your orator's said claims, and that he may be paid the amount thereof out of the proceeds, concurrently with the said heirs of Godfrey Barnsley, in proportion to the interest of said bank.

12 And that your orator may have such other and further relief in the premises as in equity shall seem meet and the nature of the case may demand. May it please your honors to grant unto your orator writs of subpœna, commanding the said Francois Justine Gaudé, Joachin Gaudé, John I. Adams, William H. Renaud, Jerome Gaubert, Marcelin Richard, Albert N. Cummings, Dr. George W. Tucker, Paschal

E. Tucker, Sarah L. Tucker, wife of William K. Douglas, and William K. Douglas, T. I. Daunis, Jay L. Adams, Mrs. Anna Goodwin Gilmour, Julia Bernard Barnsley, and C. H. Schwartz, her husband, Lucien Barnsley, George Scarborough Barnsley, and George Forost Reid, a minor, by his next friend C. H. Schwartz, William Watson Christian and Henry Scott Gilmour, executors and trustees of the estate of Thomas C. Gilmour, deceased, and Julia Gilmour and F. Massey Dawson, her husband, and Murray Gilmour, to appear and make answer to this bill of complaint, and to perform and abide all such orders and decrees herein as to the court may seem required.

13 And your orator will ever pray, etc.

(Signed) ROUSE & GRANT,
Compl't's Sol'rs.

Exhibit A, referred to in bill.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of La Fourche:

No. 3324. 7th Sept., 1867. Copy of agreement between Mr. A. N. Cummings with M. Richard & als.

Know all men by these presents that on this seventh day of the month of September, in the year of our Lord one thousand eight hundred and sixty-seven, and of the American Independence the 92nd year, before me, Joseph Kleber Gourdain, recorder and ex officio a notary public duly commissioned and qualified in and for said parish of La Fourche, in the State aforesaid, and therein residing, and in the presence of Messrs. Theophile Thibodaux and Theodule Morillon, good and competent witnesses, also domiciliated in said parish, personally came and appeared Mr.

14 Albert N. Cummings, of the city of New Orleans, who declared that he has this day purchased at sheriff's sale, in the case entitled the Bank of New Orleans vs. Tucker & als., for cash, a certain tract of land situated in this parish on the left bank of the Bayou La Fourche, at about four miles below the town of Thibodaux, measuring seven arpents (more or less) front by eighty arpents in depth, bounded above by lands of J. Rosemond Le Blanc, and below by those formerly owned by Tucker & Rose, & now belonging to R. & J. H. Tucker, together with all the buildings and improvements thereon, for the consideration of the sum of thirteen thousand and twenty-five dollars; that the said purchase price was not in reality paid in cash, but he compounded and compromised with the mortgage creditors hereinafter named, who agreed to give him time, without however impairing or novating the original claims, the right to enforce which they expressly reserve as follows, *with:*

1°. Jerome Gaubert & als., as evidenced by judgment in case No. 487 on the docket of the third district court of La Fourche, have the

15 first mortgage and vendor's privilege, which are hereby formally recognized as legal and binding on the three lower arpents front by eighty deep of said tract acquired by Tucker Bros. of J. B. Richard and his children, to secure the balance due on the purchase price, amounting this day to eighteen hundred and fifty-one $\frac{10}{100}$ dollars, for the payment of which the said J. Gaubert & als., represented by Jerome Gaubert and

Marcelin Richard, who intervene herein, hereby grant the following terms, viz:

Five hundred dollars thereof on the first day of January, eighteen hundred and sixty-eight.....	$500 00
Six hundred and fifty-one $\frac{10}{100}$ dollars thereof on the first day of March, eighteen hundred & sixty-eight.....	$651 00
(Both these sums to bear eight per cent. per annum interest, from maturity until paid, the intervening interest being abandoned.)	
And seven hundred dollars thereof on the first day of March, eighteen hundred and sixty-nine (this sum to bear eight per cent. per annum interest, from March 1st, 1868, the intervening interest being abandoned)	$700 00
	$1,851 10

16 It is distinctly understood, however, that if any of these installments should not be paid at maturity, the whole amount shall be exigible, and the said Gaubert & als. shall be, and are hereby, authorized and expressly empowered to execute and enforce the aforesaid judgment in case No. 487 on the tract to them mortgaged specially by privilege, the said Cummings binding himself to interpose no objection or obstacle thereto.

2°. Godfrey Barnsley, for the sum of four thousand nine hundred and four $\frac{40}{100}$ dollars ($4,904.40), for the payment of which the said Barnsley, represented by Louis Bush, esq., his attorney at law, who intervenes herein, grants the following terms, viz:

Sixteen hundred & thirty-four $\frac{80}{100}$ dollars on the 15th day of May, eighteen hundred & sixty-eight.....	$1,634 80
A like sum on the 15th May, eighteen hundred and sixty-nine.....	$1,634 80
And a like sum on the 15th May, eighteen hundred and seventy.....	$1,634 80
(These sums bear eight per cent. per annum interest, from date until paid.)	
	$4,904 40

3°. The Bank of New Orleans, for the sum of six thousand
17 two hundred and sixty-nine $\frac{50}{100}$ dollars ($6,269.50) for the payment of which the said bank, herein represented by Louis Bush, her attorney at law, hereby grants the following terms:

Two thousand two hundred and sixty-nine $\frac{50}{100}$ dollars thereof, on the 1st of May, eighteen hundred & sixty-eight.....	$2,269 50
Two thousand dollars on the first day of May, eighteen hundred & sixty-nine.....	$2,000 00
Two thousand dollars on the first day of May, eighteen hundred & seventy.....	$2,000 00
(Each of said installments bearing eight per cent. per annum interest after maturity till paid Thus forming the total price of adjudication.)	
	$6,269 50

Which two latter claims of Barnsley and the Bank of New Orleans are secured by mortgage on the whole tract of seven arpents front by eighty deep, the mortgage and privilege of Gaubert & als. being entitled to a preference over for the aforesaid amount due them *due them* only on the three lower arpents front by eighty deep of the said tract, and is the first mortgage on the whole of the said land with the exception of the
18 claims of the said Gaubert & als.

It is understood, as above stated, that the parties hereto do not by these presents impair, affect, or novate their existing claims; and that in case of non-payment they will be entitled to enforce the judgments which may be held by them; and furthermore, that the original mortgages and privileges remain in full force and effect, and are not hereby novated, and if need be, for the purpose of avoiding all doubts, the said privileges and mortgages are hereby recognized as operating on the said property in the proportions aforesaid, and to secure the debts stated as aforesaid with the rank above stated.

The mortgage of the said Barnsley and the bank results from act executed before the undersigned recorder on the 24th day of February, 1860, inscribed in this office on the same day, as will more fully appear by suits No. 578, entitled Bank of New Orleans vs. Tucker Bro's, and No. 793, entitled Godfrey Barnsley vs. Tucker Bro's, on file in the third district court of La Fourche.

19 And now to these presents come and intervene Dr. George W. Tucker, Mr. Paschal E. Tucker, and Mrs. Sarah L. Tucker, wife of William K. Douglas, members of the Tucker Bros.; the said Mrs. Douglas being herein represented by Eugene W. Blake, her attorney at law and in fact, by virtue of a letter hereto annexed, who respectively declare that, so far as they are concerned, they do hereby expressly and formally ratify and approve the preceding agreement in all its parts, without any exception or reservation whatever, and bind themselves to make no objection or to interpose any obstacle to any proceeding which may hereafter be necessary, hereby waiving every right which they may have in the premises, and divesting themselves of all claims or pretentions in the said property, and renouncing all objections or rights which they may have against any of the aforesaid claims.

Five cents United States internal revenue stamps have been hereto annexed and annulled, also eleven $\frac{50}{100}$ dollars.

Thus done and executed the day, month, and year first above written, at my office in the town of Thibodaux.

20 In faith whereof the parties, witnesses, and I, the recorder, have signed, after due reading hereof and translation in the French language. Approved "judgment erased null."

(Signed) A. N. CUMMINGS.
M. RICHARD.
JEROME GAUBERT, his x mark.
LOUIS BUSH.
GEO. W. TUCKER.
P. E. TUCKER.
E. W. BLAKE.
THEOPHILE THIBODAUX.
THEODULE MORELLOU.
J. K. GOURDAIN, *Recorder.*

A true copy from the original act on file and recorded in my office on the day executed.

Recorder's office, parish of La Fourche, this seventh September, A. D. eighteen hundred and sixty-seven.

[SEAL.] J. K. GOURDAIN, *Recorder.*

[Int. rev. stamp.]

(Endorsed :) 7th Sept'r, 1867. Copy of agreement A. N. Cummings with creditors of Tucker Bro's. Filed March 6, 1878. Emile E. LeBlanc, recorder. Fees, $3.00. Received and filed March 4, 1878. Emile E. LeBlanc, recorder. Exhibit A.

RECORDER'S OFFICE,
Parish of La Fourche:

I certify this copy to have been this day duly recorded in mortgage book A, pp. 570–573.

21 Witness my hand and seal of office this 6th March, 1878.

[SEAL.] (Signed) EMILE E. LE BLANC,
Recorder.

No. 7925. U. S. circuit court. N. W. Casey, rec'r, vs. John I. Adams & Co. et als. Filed January 15th, 1879. Exhibit Bayne. (Signed) F. A. Woolfley, clerk.

Plea of res adjudicata of Jno. I. Adams et al.—Filed November 3d, 1876.

United States circuit court.

THE NEW ORLEANS NATIONAL BANKING Association, &c., *vs.* JOHN I. ADAMS ET ALS. } No. 7925.

To the honorable the judges of the circuit court of the United States for the fifth circuit and district of Louisiana:

The plea of Jay L. Adams, John I. Adams, William H. Renaud, of the firm of John I. Adams & Co., defendants, to the bill of complaint of the New Orleans National Banking Association, plaintiff, for the

22 use of Nicholas W. Casey, receiver.

These defendants by protestation, not confessing or acknowledging the matters and things in and by said bill set forth and alleged to be true in such manner and form as the same are thereby and therein set forth and alleged, for plea to the whole of said bill and to the whole prayer of said bill say:

That on 28th July, 1875, your defendants, John I. Adams, William H. Renaud, George W. West, and Jay L. Adams, and composing the commercial firm of Jno. I. Adams & Co., being the holders of certain promissory notes secured by mortgage, under the laws of Louisiana, upon the property described in plaintiff's bill of complaint, instituted a certain suit upon the same against your defendant Thomas J. Daunis, in the fifteenth judicial district court of the State of Louisiana, sitting in and for the parish of La Fourche, said suit or action being entitled John I. Adams & Co.

vs. Thomas J. Daunis, No. 1456 of the docket of the said court, said court being a court of competent jurisdiction, and obtained from
23 said court a writ of seizure and sale against said property, to which they were entitled under the laws of Louisiana, and said court was competent to grant the same; that said writ duly issued to the sheriff of the parish of La Fourche and commanded him to seize and sell the same to pay the debt due plaintiff in said suit by said Daunis.

That, in pursuance and in execution of said writ of seizure and sale, the said sheriff did seize and, after fulfilling all the legal requirements and formalities, did sell said property at public auction on 2d October, 1875, and adjudicated the same to your defendant John I. Adams, he being the last and highest bidder for the same; but said sheriff thereafter declined to make title to the said property to said John I. Adams on account of sundry other inscriptions of mortgages and judgments against said property, among which are those set forth in the bill of complaint of the complainant herein.

Thereupon, on the 19th October, 1875, your defendant appeared
24 before the said fifteenth judicial district court and moved for and obtained a rule nisi upon the various holders and owners of said other inscriptions and mortgages to show cause why they should not be cancelled and erased on sundry and various grounds, that being the proper course of practice in the courts of Louisiana; and said fifteenth judicial district court having become, by virtue and reason of said proceedings, of the issuance of said writ, of said sale, and of said adjudication, the court having the exclusive jurisdiction over all questions affecting the legality, reality, inscription, and effect of all said inscriptions of judgments and mortgages. That among other parties made defendants in said rule was the present complainant, the New Orleans National Banking Association, upon whom service of said rule was made through its receiver, Nicholas W. Casey, esq., on 22d October, 1875, and on which complainant was ordered to show cause why the inscriptions of mortgages and judgments set
25 forth in his bill of complaint herein should not be erased and cancelled upon certain grounds and for certain reasons set forth in said rule; that on 7th December, 1875, said New Orleans National Banking Association, complainant herein, represented by its said receiver, appeared by counsel in said fifteenth judicial district court and filed an exception and answer to said rule; and in said answer said complainant herein set up in defence of said rule the same identical matters and made the same identical allegations as are now set up and alleged by it in its bill of complaint herein, and presented to said fifteenth judicial district court the same issues and between the same parties as are now presented to this honorable court by the bill of complaint filed herein by complainant.

That on 7th day of December, 1875, said rule came on to be tried, and was tried, before the said fifteenth judicial district court, said New Orleans National Banking Association being present and represented by its counsel, and evidence was adduced upon both sides, and, after
26 hearing arguments of counsel, the court took the matter under advisement, and on the 18th day of December, 1875, judgment was rendered in favor of these defendants, and against the New Orleans National Banking Association, complainant herein, decreeing that the mortgages set forth and described in the bill of complaint herein filed should be cancelled and erased so far as the property described in said bill of com-

plaint is concerned, and thus finally and forever settling and closing all the issues between these defendants and complainant herein as set up and alleged in the said bill of complaint herein filed by said complainant.

That on the said 18th December, 1875, said judgment was signed by said fifteenth judicial district court, and no appeal having been taken within the legal delays allowed by the law of Louisiana for an appeal to be taken to act as a supersedeas, said judgment became executory, and was executed by erasing and cancelling said mortgages from the mortgage rec-
27 ords of the parish of La Fourche as far as the same in any manner affected the Homewood plantation, the property described in the bill of complaint herein; that said judgment has the force of res adjudicata, and is now pleaded in bar of the claims of said complainant as set up in said bill of complaint; and for more certainty these defendants annex hereto the entire record of said suit No. 1456 of the fifteenth judicial district court of Louisiana, as Exhibit A, and pray that the same may be taken as part of this plea.

All which matters and things these defendants do aver to be true, and they plead the said judgment in bar to the said complainant's bill, and pray the judgment of this hon. court whether they should be compelled or ought to be required to make any other or further answer to the said bill, and pray to be hence dismissed with their costs and charges in that behalf most wrongfully sustained.

(Signed) CLAY KNOBLOCK,
" HORNOR & BENEDICT,
Solicitors.

10, 18, '76.

28 I hereby certify that in my opinion the foregoing plea is well founded in law, and proper to be filed in this case.

(Signed) JOSEPH P. HORNOR, *Solicitor.*

William H. Renaud, one of the defendants, and a member of the firm of Jno. I. Adams & Co., being duly sworn, deposes and says that the foregoing plea is not interposed for the purpose of delaying said suit or any proceedings therein, and that all the allegations contained in said plea are true in point of fact.

(Signed) WM. H. RENAUD.

Sworn to and subscribed before me this 3d day of November, 1876.

(Signed) F. B. VINOT, *U. S. Comm'r.*

Pro confesso against A. N. Cummings entered in chancery order-book, and filed November 3d, 1876.

29 U. S. circuit court, district of Louisiana. In equity.

N. O. NATIONAL BANKING ASSO'N
vs.
JOHN I. ADAMS ET ALS. } No. 7925.

On motion of Rouse & Grant, solicitors for complainant in this suit, and it appearing that the defendant Albert N. Cummings has been duly served with subpœna herein, and that said defendant has failed to demur, plead

or answer to said complainant's bill of complaint within the time required by law, it is ordered that said complainant's bill of complaint and all the matters and things therein alleged and set forth be, and the same are hereby, adjudged and taken as confessed as against said defendant.

Cross-bill of Wm. Watson Christian et als.—Filed December 1st, 1876.

U. S. circuit court.

THE NEW ORLEANS NATIONAL BANKING ASsociation for the use, &c.,
vs.
JNO. I. ADAMS ET ALS. } No. 7925.

30 To the honorable the judges of the circuit court of the United States for the district of Louisiana:

William Watson Christian and Henry Scott Gilmour, executors and trustees of the estate of Thomas C. Gilmour, deceased, and Julia Gilmour and F. Massey Dawson, her husband, and Murray Gilmour, sole heirs at law of said Thomas C. Gilmour, and Mrs. Anna Goodwyn Gilmour, widow of Thomas C. Gilmour, bring this their cross-bill against the New Orleans National Banking Association in liquidation, represented by Nicholas W. Casey, receiver thereof, Francois Justin Gaudé, Joachim Gaudé, John I. Adams, Jay L. Adams, William H. Renaud, Jerome Gaubert, Marcelin Richard, Albert N. Cummings, Dr. George W. Tucker, Paschal E. Tucker, Sarah L. Tucker, wife of William K. Douglas, lately composing the firm of Tucker Brothers, and William K. Douglas and T. J. Dannis, and thereupon your orators complain and say:

31 I. That heretofore a bill of complaint has been filed herein by the New Orleans National Banking Association in liquidation, represented herein by Nicholas W. Casey, wherein it is averred that the Bank of New Orleans originally, a body corporate under the laws of Louisiana, carried on the business of banking under said laws until on or about July 1, 1871, when said Bank of New Orleans, by due proceedings under authority of the act of Congress approved June 3, 1864, called the "national bank act," and of the acts amendatory thereof, changed its character and organization to that of a national banking association, and was converted into a national banking association under the name and style of the New Orleans National Banking Association, which last named association succeeded to all the rights of the said Bank of New Orleans on or about July 1, 1871, and became entitled to have and recover all debts due the bank prior thereto.

32 II. That on or about the 24th of February, 1860, said Bank of New Orleans became the holder and owner of a certain promissory note for the sum of five thousand dollars, made by Tucker Brothers to the order of Robert Tucker, and by him endorsed. That at the date aforesaid said George W. Tucker, acting for said Tucker Brothers as their agent and for himself, made and executed a certain act of mortgage bearing upon the lands hereinafter described, which mortgage was duly recorded in the mortgage office of the parish of Lafourche on or about February 24, 1860, to secure the payment of said note, and three others of concurrent rank for a like amount each, said mortgage being made in

favor of Robert Tucker and the holder or holders of said notes; that two of said mortgage notes have been paid, but that the note for five thousand dollars, held by the bank as aforesaid, which fell due on the 15th of February, 1861, and the other note for five thousand dollars, which fell due on 20th January, 1861, and was held by Godfrey Barnsley, were not paid at maturity.

33 III. That on or about September 4th, 1866, said Bank of New Orleans instituted a suit on said note held by it against said Tucker Brothers praying for a judgment against them and a sale of the said mortgaged property, to satisfy and pay the same; and on the day of June, 1867, the district court for the parish of Lafourche, in the State of Louisiana, rendered a judgment in favor of said Bank of New Orleans, and against said Tucker Brothers, for the full amount of said note, with eight per cent. per annum interest thereon from February 15th, 1861, with recognition of the said bank's right of mortgage as aforesaid upon the following-described property, to wit:

"A certain tract of land, situated in the parish of Lafourche, on the left bank of the bayou Lafourche, at about four miles below the town of Thibodaux, measuring seven arpents, more or less, front, by eighty arpents in depth, bounded above by lands of J. Rosemond LeBlanc, and be-

34 low by those formerly owned by Tucker & Rose, and now belonging to R. & J. H. Tucker, together with all the buildings and improvements thereon."

IV. That a writ of fieri facias was issued on said judgment, under which the sheriff of said parish seized said property and sold and adjudicated the same to Albert N. Cummings for the price of thirteen thousand and twenty-five dollars, on the 7th day of September, 1867, but the said Cummings being unable to comply with his bid by paying the price of the adjudication in cash, it was agreed by and between the said Tucker Brothers, the Bank of New Orleans, Godfrey Barnsley, and J. Gaubert et als., and Albert N. Cummings, they being the sole parties in interest, that he, the said Cummings, should be granted time to pay the said price upon the following terms:

It was agreed that out of the purchase price said Cummings should pay one Gaubert and others, in satisfaction of a judgment they held

35 against said Tucker Brothers, which was secured by mortgage and vendor's lien on a part of said lands, the sum of eighteen hundred and fifty-one $\frac{10}{100}$ dollars, in instalments, the last falling due March 1st, 1867; that out of the said purchase-money he should also pay to Godfrey Barnsley the sum of forty-nine hundred and four $\frac{40}{100}$ dollars, in instalments, with 8 % interest per annum from September 7th, 1867, till paid, the last instalment falling due May 15, 1870; and, lastly, that he should pay the sum of six thousand two hundred and sixty-nine $\frac{50}{100}$ dollars to said Bank of New Orleans, in instalments; twenty-two hundred and sixty-nine $\frac{50}{100}$ dollars thereof was to be paid May 1st, 1868, and two thousand May 1, 1869, and two thousand on May 1, 1870, each instalment to bear interest at eight per cent. from the maturity thereof; and it was further agreed that the claims of Godfrey Barnsley and the Bank of New Orleans were secured by mortgage on the whole of said tract of land; and that

36 the claims of Gaubert and others were entitled to a mortgage and privilege by preference over them on the lower three arpents. It

was also specially agreed that the original mortgage and privilege securing said notes and claims of the Bank of New Orleans and of said Godfrey Barnsley as aforesaid, recorded in the mortgage office of the parish of Lafourche on 24th of February, 1860, should remain in full force and effect for the security of said claims; and to avoid all doubt as to the effect of the foregoing agreement, a present privilege and mortgage were declared to exist, and were recognized as resulting from said agreement, and as operating against said property to secure the debt above set forth, which formed a part of the purchase price of the property sold to said Cummings by the sheriff as aforesaid; which said agreement was reduced to writing and executed by all the parties thereto, and made authentic before Joseph Kleber Gourdain, recorder and ex officio notary public of the parish of Lafourche, State of Louisiana, on September 7th, 1867, and
37 was duly recorded in the office of the recorder of mortgages for said parish of Lafourche on September 12th, 1867, in mortgage book No. 5, folio No. 561, where it still remains of record, and the sheriff of said parish made his deed of said property to the said Cummings, and filed the said writ of fieri facias in court, with the return that he had adjudicated the said property to said Cummings, who satisfied the price of the adjudication on the terms set forth in said authentic act. And for greater certainty in this behalf your orator annex thereto a copy of said authentic act of agreement, marked "Exhibit A" and made part hereof.

V. And it is further alleged that the debt due the said Gaubert and others, firstly above set forth in said agreement, has been paid and satisfied and no longer remains a charge on said property, and that the claims of your orators and said Bank of New Orleans are secured under the registry of said agreement by the vendors' lien and mortgage on said
38 property, with preference over the claims and demands of any of the other defendants.

VI. That your orator is informed that the said John I. Adams, William H. Renaud, and Jay L. Adams, composing the late firm of John I. Adams & Co., claim to have a mortgage on said property; and that Francois Justin Gaudé and Joachim Gaudé are in possession and claim to be the owners of said property, but your orators charge that the interest of said parties, if any they have, were acquired subsequent to the 12th of September, 1867, the date of the registry of their mortgage and vendor's lien.

VII. And your orators in this cross-bill allege that said Godfrey Barnsley was acting throughout as their agent, and in their behalf, and that said Barnsley had no interest whatever in said note, but that the said claim was and is the exclusive property of your orators.

VIII. That the said Albert N. Cummings has failed and neglected to pay the amount of your orators' said claim, now due, and the
39 claim of said Bank of New Orleans, though due demand has been made upon him for the same; and that the averments in said bill are all and singular true and adopted by your orators.

To the end, therefore, that defendants may full, true, and perfect answers make unto your orators' said cross-bill and all the matters and things therein contained, according to the best of their knowledge, information, and belief (but not under oath, the same being expressly waived); that your orators said mortgage and vendors' lien and privilege may be recog-

nized and established and foreclosed upon said property with priority and preference over all claims of the defendants; that said defendant, Albert N. Cummings, may be decreed to pay the amount that shall be found due to your orators on their aforesaid claim, and that said property, mortgaged as aforesaid, may be sold to satisfy your orators' said claim, and that they may be paid the amount thereof out of the proceeds concurrently
40 with said Bank of New Orleans in proportion to the interest of your orators; and that your orators may have such other and further relief in the premises as to equity shall seem meet and the nature of the case may demand. May it please your honors to grant unto your orators writs of subpœna commanding the said Francois Justin Gaudé, Joachim Gaudé, John I. Adams, Jay L. Adams, William H. Renaud, Jerome Gaubert, Marclin Richard, Albert N. Cummings, Dr. George W. Tucker, Paschal E. Tucker, Sarah L. Tucker, wife of William K. Douglas, and William K. Douglas, and T. J. Daunis, and the New Orleans National Banking Association, represented by Nicholas W. Casey, receiver, to appear and made answer to this cross-bill of complaint, and further, to stand to perform and abide such further order, direction, and decree herein as to this honorable court shall seem meet.

(Signed) CLARKE, BAYNE & RENSHAW,
Solicitors for Complainants in Cross-Bill.

41 *Answer of heirs of G. Barnsley et als. to bill.—Filed December* 1, 1876.

United States circuit court, fifth circuit & district of Louisiana. In equity.

NEW ORLEANS NAT'L BANKING ASSOCIATION
vs.
JOHN I. ADAMS ET ALS. } No. 7925.

The joint and several answer of William Watson Christain and Henry Scott Gilmour, executors and trustees of the estate of Thomas C. Gilmour, deceased, and Julia Gilmour and F. Massey Dawson, her husband, and Murray Gilmour, sole heirs of Thomas C. Gilmour, and Mrs. Anna Goodwin Gilmour, widow of Thomas C. Gilmour, Julia Bernard Barnsley, and C. H. Schwantz, her husband, Lucien Barnsley, George Scarborough Barnsley and George Forest Reid, a minor, represented by C. H. Schwartz, his next friend, to the bill of complaint of the New Orleans National Banking Association, say that they admit each and every allega-
42 tion of said bill of complaint, and pray and desire that the relief be granted as prayed for to said complainant and trustees of Gilmour.

(Signed) CLARKE, BAYNE & RENSHAW, *Sol'rs.*

Entry in chancery order-book.—Cause set down as to Gilmour et als.—Extract from chancery order-book of 14*th December*, 1876.—*December* 14, 1876.

NEW ORLEANS NAT'L BANKING ASS'N
vs.
JOHN I. ADAMS ET ALS. } No. 7925.

Complainant hereby sets down this cause for trial as to William Wat-

son Christain and Henry Scott Gilmour, executors, trustees, &c., Julia Gilmour, F. Massey Dawson, Murray Gilmour, Mrs. Anna Goodwin Gilmour, Julia Bernard Barnsley, and C. H. Schwartz, Lucien Barnsley, George Scarborough Barnsley, and Geo. Forrest Reid, on their answer and the bill of complaint.

43 *Submission of plea of John I. Adams & Co.—November term*, 1876.

NEW ORLEANS, *Thursday, December* 14, 1876.

Court met pursuant to adjournment.
Present, Hon. E. C. Billings, district judge.

N. O. NATIONAL BANKING ASSOCIATION
vs.
JOHN I. ADAMS ET ALS. } No. 7925.

By written consent of counsel the cause is submitted as to the plea of J I. Adams & Co. and replication, on briefs and the evidence on file.

Order: Plea overruled.—Extract from minutes of 10*th January*, 1877.

NEW ORLEANS NAT'L BANKING ASSOCIATION
vs.
JOHN I. ADAMS ET ALS. } No. 7925.

This cause having been submitted on the bill, plea of J. I. Adams & Co., and replication, and the court, having duly considered the same, does, for reasons assigned in writing, order that the said plea be over-
44 ruled, with leave to said defendants, if the appeal has not been perfected by the plea puis darien continuance, to present the same, and with leave to plead either res judicata or lis pendens.

Plea of lis pendens of John I. Adams & Co. to original bill.—Filed January 20*th*, 1877.

United States circuit court. In chancery.

N. O. NAT'L BANKING ASSOCIATION
vs.
JOHN I. ADAMS ET ALS. } No. 7925.

To the honorable the judges of the circuit court of the United States for the fifth circuit and district of Louisiana:

The additional plea of Jay L. Adams, John I. Adams, William H. Renaud, and of the firm of John I. Adams & Co., defendants, to the bill of complaint of the New Orleans National Banking Association, plaintiff, for the use of Nicholas W. Casey, receiver.

45 These defendants by protestation, not confessing or acknowledging the matters and things in and by said bill set forth and alleged to be true, in such manner and form as the same are thereby and therein

set forth and alleged, for additional plea to the whole of said bill and to the whole prayer of said bill, by leave of the court in the premises, say:

That they reiterate all the allegations contained and set forth in their original plea herein, and pray that the same may be made part hereof; and in addition thereto they aver that since the said original plea was filed herein, to wit, on 28th November, 1876, the complainant herein has filed his bond and completed his appeal from the judgment of the fifteenth judicial district court of the State of Louisiana, sitting in and for the parish of Lafourche, in the suit entitled John I. Adams & Co. vs. Thos. J. Dannis, No. 1456 of the docket of said court, which said judgment these defendants heretofore pleaded as res adjudicata; that said appeal has been filed in the supreme court of Louisiana, and is now there pending.

46 All which matters and things these defendants do aver to be true, and they plead the said judgment and the said appeal pending in bar to the said complainant's bill, and pray the judgment of this hon. court whether shey should be compelled or ought to be required to make any other or further answer to the said bill, until and unless the said judgment be reversed or annulled by said supreme court; and they pray to be hence dismissed with their costs and charges in that behalf most wrongfully sustained.

(Signed) CLAY KNOBLOCK,
" HORNER & BENEDICT,
Solicitors.

I hereby certify that in my opinion the *following* plea is well founded in law, and proper to be filed in this case.

(Signed.) JOSEPH T. HORNER,
Solicitor.

William H. Renaud, one of the defendants and a member of the firm of John I. Adams & Co., being duly sworn, says that the foregoing
47 plea is not interposed for the purpose of delaying said suit or any proceedings therein, and that all the allegations contained in said plea are true in fact.

(Signed) WM. H. RENAUD.

Sworn to and subscribed before me this 19th day of January, 1874.

(Signed) F. B. VINOT, *U. S. Comm'r.*

Plea of John I. Adams et als. to cross-bill.—Filed January 20th, 1877.

N. O. NAT'L BANKING ASSOCIATION
vs.
JOHN I. ADAMS ET ALS. } No. 7925. In chancery.

To the honorable the judges of the circuit court of the United States for the fifth circuit and district of Louisiana:

The plea of Jay L. Adams, John I. Adams, William H. Renaud and of the firm of John I. Adams & Co., and of F. J. Gaudet, Joachim Gaudet, and T. J. Dannis, defendants, to the cross-bill of complaint of William Watson Christian and Henry Scott Gilmour, executors
48 and trustees of the estate of Thomas C. Gilmour, deceased, and Julia Gilmour and F. Massey Dawson, her husband, and Murray

Gilmour, sole heirs at law of said Thomas C. Gilmour, and Mrs. Anna Goodwin Gilmour, widow of Thomas C. Gilmour.

These defendants, by protestation, not confessing or acknowledging the matters and things in and by said cross-bill set forth and alleged to be true, in such manner and form as the same are thereby and therein set forth and alleged, for plea to such portions of said cross-bill and the prayer thereof as are covered by this plea:

1°. That the principal obligation upon which complainants in said cross-bill declare, viz: the note for five thousand dollars made by Tucker Brothers, which fell due on 20th January, 1861, and was held by Godfrey Barnsley and now held by said complainants in said cross-bill, and more fully described in article II of said cross-bill, is prescribed by the prescription of five years and is extinguished by such prescription, as provided by article 3540 of the civil code of Louisiana.

49 2°. That the auxiliary obligation upon which complainants in said cross-bill declare, viz, the mortgage executed by George W. Tucker, for Tucker Brothers, dated on or about the 24th February, 1860, and fully described in section two of said cross-bill, fell, lapsed, and was extinguished by the extinguishment of the principal obligation, the note aforesaid, and, moreover, said mortgage is and was further prescribed by the lapse of ten years, under article 3544 of the civil code of the State of Louisiana.

3°. That said note and said mortgage have never been in any manner legally renewed, nor have said prescriptions ever been interrupted legally, and that the document annexed to said cross-bill as Exhibit A, purporting to be an act of agreement, of date 7th September, 1867, before Joseph Kleber Gourdain, recorder, &c., between Cummings and others, fully set out in section 5 of said cross-bill, does not in any manner legally renew said note or mortgage, or interrupt the prescriptions above pleaded;

50 that said is barred also by the prescription of five years from said 7 September, 1867.

All which matters and things these defendants do aver to be true, and they plead the prescriptions of five and ten years in bar to the said complainants' cross-bill, and pray the judgment of this honorable court whether they should be compelled or ought to be required to make any other or further answer to the said cross-bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

(Signed) CLAY KNOBLOCK,
" HORNOR & BENEDICT,
Solicitors.

I hereby certify that, in my opinion, the foregoing plea is well founded in law and proper to be filed in this case.

(Signed) JOSEPH T. HORNOR.

William H. Renaud, one of the defendants, and a member of the firm of John I. Adams & Co., being duly sworn, deposes and says that the foregoing plea is not interposed for the purpose of delaying said

51 suit or any proceedings therein, and that all the allegations contained in said plea are true in point of fact.

(Signed) WM. H. RENAUD.

Sworn to and subscribed before me this 19th day of January, 1877.
(Signed) F. B. VINOT, *U. S. Comm'r.*

Answer of Jno. I. Adams et als. to part of cross-bill.—Filed January 24, 1877.

U. S. circuit court.

N. O. NATIONAL BANKING ASSO'N
vs.
JOHN I. ADAMS ET ALS. } No. 7925. In chancery.

To the honorable the judges of the circuit court of the United States for the fifth circuit and district of Louisiana:

The answer of Jay L. Adams, John I. Adams, William H. Renaud, and of the firm of John I. Adams & Co., and of F. J. Gaudet, Joachim Gaudet, and T. J. Dannis, defendants, to so much of the cross-
52 bill of complaint of William Watson Christian and Henry Scott Gilmour, executors and trustees of the estate of Thomas C. Gilmour, deceased, and Julia Gilmour and F. Massie Dawson, her husband, and Murray Gilmour, sole heirs at law of said Thomas C. Gilmour, and Mrs. Anna Goodwin Gilmour, widow of Thomas C. Gilmour, as is not covered by the plea hereinbefore filed by these defendants.

These defendants, respectively, now, and at all times hereafter, saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and impefections in the said bill contained, for answer to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, say:

That it is not true that the document marked "Exhibit A," and annexed to said cross-bill, purporting to be an act of agreement of date 7 September, 1867, before Joseph Kleber Gourdain, recorder, &c., between Cummings and others, created any mortgage on the property
53 described in said cross-bill, did not secure any of the claims therein specified by any mortgage on said property, did not revive or renew any preceding mortgage, and did not declare or recognize any privilege or mortgage, as set up in section IV of said cross-bill or otherwise.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are charged, without this, that there is any other matter, cause or thing in the IV section of said complainant's said crosss-bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove, as this hon. court shall direct; and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) CLAY KNOBLOCH,
" HORNOR & BENEDICT,
Solicitors.

54 *Replication to plea & answer to cross-bill.—Filed February 1st, 1877.*

U. S. circuit court. In equity.

NEW ORLEANS NATIONAL BANKING ASSOCIATION
vs.
JOHN I. ADAMS ET ALS. } No. 7925.

The replication of the complainants, William Watson Christian and Henry Scott Gilmour, executors and trustees of the estate of Thomas C. Gilmour, and Julia Gilmour, and F. Massey Dawson, her husband, and Murray Gilmour, sole heirs at law of said Thomas C. Gilmour, and Mrs. Anna Goodwin Gilmour, widow of Thomas C. Gilmour, to the plea and answer of Jay L. Adams, John I. Adams, William H. Renaud of the firm of John I. Adams & Co., and of F. J. Gaudet, Joachhim Gaudet, and T. J. Dannis, defendants, to the cross-bill of complaint of these complaints.

These defendants, saving and reserving to themselves all advan-
55 tages of exception to the insufficiencies and errors of the said plea and answer, for replication thereunto say that they will aver and prove their said cross-bill to be true and sufficient, and that said plea and answer are uncertain and insufficient in law to be replied unto without this, that anything in said plea and answer are true and effectual in law to be replied unto and not hereby well and sufficiently replied unto; all of which matters and things repliants are ready to prove and maintain, as the court shall direct, and they humbly pray and as by their said bill they have already prayed.

(Signed) CLARKE, BAYNE & RENSHAW,
For Compl'ts in Cross-Bill.

Pro confesso against A. N. Cummings on cross-bill.—Entry at rules, Monday, February 5, 1877.

NEW ORLEANS NATIONAL BANKING ASSOCIATION
vs.
JOHN I. ADAMS ET ALS. } No. 7925. On cross.

On motion of Clarke, Bayne & Renshaw, solicitors for William
56 Watson Christian and Henry Scott Gilmour, executors and trustees of the estate of Thomas C. Gilmour, deceased, and Julia Gilmour and others, complainants in the cross-bill; and it appearing that the defendant Albert N. Cummings has been duly served with subpœna on said cross-bill, and that said defendant has failed to demur, plead, or answer to said complainant's cross-bill of complaint within the time required by law, it is ordered that said complainant's cross-bill of complaint, and all the matters and things therein alleged and set forth, be, and the same are hereby, adjudged and taken as confessed as against said defendant.

Motion and order: Plea of John I. Adams & Co., referred to J. W. Gurley, master.—Entered & filed April 7, 1877.

U. S. circuit court.

NEW ORLEANS NAT'L BANKING ASSOCIATION, N. W. Casey, rec'r, *vs.* JOHN I. ADAMS & CO. ET ALS. } No. 7925.

57 Now comes complainant by Rouse & Grant, their solicitors, and suggesting to the court that he desires to withdraw his replication to the plea of lis pendens filed by John I. Adams & Co., and take a reference of the plea to a master to examine and report as to the truth thereof, it is therefore ordered that complainant haveleave to withdraw his said replication, and that said plea be referred to J. W. Gurley, esq., master, to examine and report as to the truth of said plea.

Report of master on reference on plea of lis pendens.—Filed May 24, 1877.

N. O. NATIONAL BANKING ASSOCIATION *vs.* JOHN I. ADAMS ET ALS. } No. 7925.

To the hon. the circuit court of the United States for the district of Louisiana:

The plea of lis pendens filed by John I. Adams & Co., defendants, to the bill of complaint of the New Orleans National Banking Asso-
58 ciation against them and others, was referred to the undersigned, master in chancery on the 7th April, 1877, so enquire and report as to the truth thereof.

It appears from an inspection of the record that the bank held a note for $5,000, secured by a mortgage recorded on 24th February, 1860, upon the property described in the bill. On the 4th September, 1866, the bank instituted suit on the note, and on June, 1867, obtained judgment, which was inscribed in the mortgage office on 30th September, 1867, and thus operated as a judicial mortgage upon said property. On this judgment an execution was issued, and at sheriff's sale under it the mortgaged property was adjudicated to one Cummings, who, being unable to comply with the terms of the sale, they were by written agreement modified, and the agreement was inscribed in the mortgage office on the 12th September, 1867.

That on the 28th July, 1875, John I. Adams & Co., holding notes secured on said property by mortgage of date 2d April, 1870, pro-
59 cured its sale and became themselves the purchasers. The sheriff refused to complete the adjudication, on the ground that the certificate of mortgages showed the existence, among others, of a judicial mortgage on the property in favor of the Bank of New Orleans (being the mortgage resulting from the judgment in favor of the bank, inscribed as above stated, on the 30th September, 1867). Whereupon John I. Adams & Co. took a rule upon the bank to show cause why that judicial mort-

gage should not be erased, on the ground that it became vacated and annulled by the sheriff's sale of the property under the judgment to Cummings. On the trial of the rule, the issue was made by the bank that the aforesaid agreement between Cummings, itself, and other parties in interest, operated to preserve and keep alive its original mortgage of 1860 and its judicial mortgage of June, 1867. It was not put at issue, nor contended that the agreement with Cummings originated or in itself operated a mortgage.

The defendants in the case now before this court contend, by
60 their plea, that the matters put in issue by the aforesaid rule were the same as those made by complainant's bill, while the complainants insist that they claim in their bill that the agreement with Cummings and others is in itself a mortgage, and operated as such from the time of its inscription in the mortgage office, and that they therein seek to enforce it as such upon the property without reference to the original mortgage of 1860, or the judicial one of June, 1867.

The bill is very ambiguous in its terms. It contains an allegation, however, to the effect that the interest of Adams & Co. and Gaudé, if any they have, were acquired after the 12th September, 1867, the date of the registry of the bank's mortgage and vendor's lien; and in the prayer it is asked that complainant's said mortgage and vendor's lien and privilege may be recognized and foreclosed with preference, &c., evidently referring to the mortgage and vendor's lien recorded, as stated, on the 12th September, 1867.

It appears from the record that the only instrument inscribed
61 in the mortgage office on that day on behalf of the bank was the agreement with Cummings.

The conclusion is that the bill seeks to enforce that agreement as a mortgage. The issues made by it are different from those made by the rule in the State court.

The master therefore reports that the plea of lis pendens is not founded in fact.

Respectfully submitted.

(Signed) J. W. GURLEY,
Master, &c.

24 MAY, 1877.

Motion and order: Plea set down on master's report.—April term, 1877.

NEW ORLEANS, *Monday, May 28th,* 1877.

Court met pursuant to adjournment.

Present, Hon. E. C. Billings, district judge.

N. O. NATIONAL BANKING ASSOCIATION
vs.
JOHN I. ADAMS ET ALS. } No. 7925.

On motion of Rouse & Grant, solicitors for complainant, it is
62 ordered that the plea of lis pendens be set down for hearing on the master's report on the 1st day of June, 1877, at 11 a. m., and that the parties in interest be notified.

Amendment to plea of lis pendens.—Filed June 7th, 1877.

U. S. circuit court. In chancery.

N. O. NATIONAL BANKING ASSOCIATION
vs.
JOHN I. ADAMS ET ALS. } No. 7925.

Amendments of John I. Adams et als. to their plea of lis pendens herein filed 20th January, 1877.

That since the filing of said plea of lis pendens, by permission of the court, the suit described in said plea under the title of John I. Adams & Co. vs. Thomas J. Daunis has been entered by the plaintiff in this suit in the supreme court of Louisiana, and has there been heard, argued, and decided by that tribunal, affirming the judgment of the fifteenth
63 judicial district court of the State of Louisiana, as heretofore fully set forth, as will more fully appear by a reference to a duly certified copy of the decree of said supreme court hereto annexed and made part hereof and part of said plea of lis pendens.

That subsequently, on 23d April, 1877, the plaintiff in the present suit, defendant in the said suit in the State court, obtained from said supreme court of Louisiana a writ of error from said decree to the Supreme Court of the United States, and said case is now pending on said writ of error.

Wherefore these defendants pray your honors that this amendment to said plea be allowed, and for judgment dismissing complainant's bill, and for costs and general relief.

(Signed) CLAY KNOBLOCH &
HORNER & BENEDICT,
Solicitors for Jno. I. Adams & Co.

Decision of supreme court of La. in re John I. Adams & Co. vs. Thos. J. Daunis, annexed to & made part of foregoing amendment to plea of lis pendens.—Filed June 7, 1877.

64 Supreme court of the State of Louisiana, clerk's office, New Orleans, April 2d, 1877.

JOHN I. ADAMS & CO., IN LIQ.,
vs.
THOMAS J. DAUNIS, N. W. CASEY, RECEIVER of the Bank of New Orleans. } No. 6532.

Appeal from the 15th judicial district court of the parish of La Fourche.

Mr. Justice Marr delivered the opinion and decree of the court in the words and figures following, to wit:

On the 24th Feb'y, 1860, Tucker Brothers executed a mortgage, which was recorded on the same day, on a plantation in the parish of La Fourche, in favor of Robert Tucker, or any future holder, to secure four promissory notes for $5,000 each, of which two only seem to have been used.

The Bank of New Orleans held one of these notes and Godfrey Barns-

ley held the other. The bank obtained judgment against Tucker Brothers on the note held by it with recognition of the mortgage, which was recorded as a judicial mortgage on the 28th June, 1867. Barnsley
65 brought suit on the note held by him, which was not prosecuted to judgment, and it seems to have been discontinued.

Execution issued on the judgment in favor of the bank, under which the sheriff seized the mortgaged property and sold it, on the 7th September, 1867, to A. N. Cummings for cash.

The first mortgage in date bore on part only of the property, and was in favor of Gaubert and Richard, who had obtained judgment against Tucker Brothers for the amount due them, which was recorded, as a judicial mortgage, on the 14th July, 1866, and the next in rank was that under which the bank and Barnsley claimed. The price of the adjudication was not sufficient to pay the amount due these creditors in the second rank. Of course the junior mortgages were cut off; and the creditors in the first and second ranks were the only persons who were interested in the distribution of the proceeds of the sale.

The sheriff on his return, after the usual recitals, states that
66 the property was adjudicated to the last and highest bidder, A. N. Cummings, "for and in consideration of the sum of thirteen thousand and twenty-five dollars, paid as follows, to wit: 1°. The purchaser retained in his hands the sum of $1,851.10, the amount due to the first-mortgage creditors, Gaubert and Richard," which amount "remained second by same mortgage." 2°. The balance of adjudication, eleven thousand one hundred and seventy-three $\frac{90}{100}$ dollars, is applied to the settlement of the claim of the plaintiff and Godfrey Barnsley, each holding a $5,000 note, secured by the second mortgage in the following proportions, the fund being insufficient to extinguish these claims, viz:

To the bank, to cover principal, interest, and costs, pro rata, $6,269.50. To G. Barnsley, pro rata, $4,904.40, as will more fully appear by act of compromise and agreement between the parties, &c.

The agreement referred to in the return is of the same date as the
67 sale. It begins with the declaration by Cummings "that he has this day purchased at sheriff's sale, in the case entitled the Bank of New Orleans vs. Tucker Bros., for cash," and then follows a description of the property and statement of the price of the adjudication. The agreement then recites:

"That the purchase price was not in reality paid in cash, but the purchaser compounded and compromised with the mortgage creditors herein before named, who agreed to give him time, without however impairing or novating their original claims, the right to enforce which they expressly reserve."

The payments were to be in three instalments with respect to Gaubert & Richard, declared to be the creditors next in rank, after dividing the $1,851.10 to be paid them into three parts, as agreed upon, and fixing the dates from which they are respectively to bear interest. The agreement states:

"It is distinctly understood, howe'r, that if any of these installments should not be paid at maturity the whole amount shall be exigible,
68 and Gaubert and Richard shall be and are hereby authorized and expressly empowered to enforce the aforesaid judgment in case No.

487, on the tract to them mortgaged specially by privilege, the said Cummings binding himself to interpose no objection or obstacle thereto."

After dividing the $4,904.40 to be paid to Barnsley and the $6,269.50 to be paid the bank into three parts each, and fixing the dates of payment: and the time from which they are to bear interest, the agreement proceeds,

"It is understood, as above stated, that the parties hereto do not by these presents impair, affect, or novate their existing claims, and that in case of non-payment they will be entitled to enforce the judgment which may be held by them, and, furthermore, that the original mortgages and privileges remain in full force and effect and are not hereby novated; and if need be, for the purpose of avoiding all doubt, the said privileges and
69 mortgages are hereby recognized as operating on the said property in the proportions aforesaid, and to secure the debts aforesaid, with the rank above stated. The mortgage of the said Barnsley and the bank results from an act executed before the undersigned recorder, on the 24th February, 1860, inscribed in this office on the same day, as will more fully appear by suit No. 578, entitled Bank of New Orleans vs. Tucker Bros., and No. 793, entitled Godfrey Barnsley vs. Tucker Bros., on file in the third district court of La Fourche."

The agreement was recorded in the book of conventional mortgages on the day of its date, 7 Sept'r, 1867.

Pursuant to the sale and adjudication of 7 Sept'r, the sheriff, on the 9th Sept'r, made a deed to Cummings, in which he recites all that he had done touching the sale, and copies his return in full. He then proceeds to "sell, set over, transfer, and convey unto the purchaser, A. N. Cummings, for the sum above stipulated and paid as aforesaid, all the
70 rights, title, and interest which defendants, Tucker Bros., had in or on the aforesaid property."

The sheriff treated the sale as having been made for cash, and he reserved no mortgage on the property. The deed was registered on 30 Sept'r in the book of conveyances.

In Dec'r, 1868, Cummings sold the property to Mrs. Tucker, who assumed to pay the debts for which Cummings had bound himself; and on the same day she sold half of it to Thomas J. Daunis, with whom she formed a planting partnership. Daunis assumed the same debts, but neither he nor Mrs. Tucker gave any mortgage to secure the payment.

On the 2d April, 1870, Daunis and Mrs. Tucker mortgaged the property to John I. Adams & Co.; and on the 1st April, 1871, Mrs. Tucker sold her half to Daunis, who assumed all the debts for which she had bound herself, but he gave no mortgage to secure the payment.

71 On the 25th July, 1875, Adams & Co. required the receiver to cancel and erase the inscription of the conventional mortgage of 24th Feb'ry, 1860, on the ground that more than ten years had elapsed after the date of this inscription when they, on the 2d April, 1870, acquired their mortgage on the property, and this inscription had not been renewed.

The recorder complied with this demand, as he was bound to do by the act of 1843 (Rev. Stats., sec. 450, 3141), amending article 3333, now article 3369, of the Civil Code; and on the 28th July Adams & Co. proceeded against Daunis on their mortgage by seizure and sale. The property was sold on the 2d October, 1875, and the mortgagees became the purchasers for some $17,519, less than half the mortgage debt due them. The sheriff

refused to complete the adjudication without payment of certain mortgage claims against Tucker Bros., among others that of the Bank of New Orleans, resulting from the judgment recorded 28th June, 1867.

72 Adams & Co. then took a rule on the recorder, N. W. Casey, receiver of the New Orleans National Banking Association, the successor of the Bank of New Orleans, Goodrich & Co., R. & E. L. Tanner, Gaubert & Richard, and the sheriff, the recorder, and the several creditors, to show cause why the mortgage appearing in the names of these creditors, respectively, in so far as they affect the property in question, should not be cancelled and erased, and the sheriff to show cause why he should not complete the adjudication and put the purchasers in possession.

Casey alone appeared and contested this rule. He plead want of jurisdiction, and that the proper and necessary parties were not before the court. He also plead a general denial, and set up the judgment against Tucker Bros. in favor of the Bank of New Orleans, recorded as a judicial mortgage on the 28th June, 1867, which he alleged had not been paid and was in full force.

73 The judgment of the court below made the rule absolute, and ordered the recorder to cancel and erase the several mortgages specified in the rule and in accordance with its terms, and the sheriff to complete the adjudication and to put the purchasers in possession. From this judgment Casey took a devolutive appeal.

The plea to the jurisdiction is twofold: 1°. That the national banks cannot be sued in a State court, except in the county or parish in which they are located. 2°. That the rights of the bank cannot be determined on a rule, but only by direct action.

1°. As to the latter objection, it suffices to say that in such a case as this the law requires the proceeding to be summary. (Code of Practice, 754, 755; Rev. Stats., sections 1942, 2903.)

2°. The other plea to the jurisdiction is based upon section 57 of the national bank act, which was omitted in the Revised Statutes of the United States, but is to be found in the Appendix, p. 1437, as an amendment to § 5198, as follows:

74 "Suits, actions, and proceedings against any association under this title may be had in any circuit, district, or territorial court of the United States held within the district in which said association may be established, or in any State, county, or municipal court in the county or city in which said association is located, having jurisdiction in similar cases."

We do not understand this section as excluding all other jurisdiction than those specified. The State courts derive their jurisdiction from State law, not from the laws of the United States, and we must look to the State law to ascertain whether a State court has jurisdiction in any given case, except where exclusive jurisdiction is given to the Federal tribunals by the Constitution and laws of the United States.

Section 5136 of the Revised Statutes, section 8 of the national bank act, authorizes the banks "to sue and be sued, complain and defend in any court of law and equity, as fully as natural persons." That is,

75 these banks are corporations, and they proceed are proceeded against as other corporations. On'e vested with this power and capacity they are amenable to the jurisdiction of the courts of the States in

which they are respectively located, just as other corporations or natural persons are, and section 57 of said bank act is merely declaratory, and was not intended as an abridgement of the power and jurisdiction of the State courts touching property or persons, natural or corporate, within their territorial limits. Of course, these associations, just as natural persons, may have causes in which they are parties heard and determined in the Federal courts either on original process or by removal in the cases provided by the laws of the United States.

In Louisiana the jurisdiction of the courts depends upon the subject-matter in controversy and the domicil of the defendant. The New Orleans National Banking Association had its domicil in New Or-
76 leans, and in any ordinary civil case it could not have been sued out of the parish of Orleans. Casey, the receiver, has his domicil at the city of New Orleans, and in like manner he is not subject to the ordinary jurisdiction of the courts of other parishes.

The association was not made a party to this proceeding. The Bank of New Orleans no longer exists. It was converted into the New Orleans National Banking Association in 1871, and Casey, receiver of that association, administers the effects which formerly belonged to the Bank of New Orleans. If the association were a party it would be amenable to the jurisdiction of any State court in which a natural person having his domicil at the city of New Orleans could be sued. The case cited by appellants, counsel, Bank of Bethel vs. Pahquoique Bank, 14 Wallace, 383, simply decides that a national bank does not lose its corporate existence by the appointment of a receiver, and that it may still be sued just as a
77 natural person in a court of the State, precisely as if a receiver had not been appointed.

The question in this case is not whether this National Banking Association may be sued in a State court after a receiver has been appointed, but whether a receiver having been appointed he is amenable to the jurisdiction of a State court in a parish different from that in which the association was located and in which also he has his domicil.

By the act of 1841, re-enacted in 1855, p. 497, sec. 37, and again in the Rev. Stats. of 1870, sections 1942, 2903, "Whenever a conflict of privileges arises between creditors all the suits and claims shall be transferred to the court by whose mandate the property was first seized either in mesne process or on execution, and the said court shall proceed to class the privileges and mortgages according to their rank and privilege in a summary manner after notifying the parties interested."

The whole controversy in this case is a conflict of privileges.
78 The property was situated in La Fourche; it had been seized and sold under process of the district court of that parish and no other court in the State had power or jurisdiction to settle the controversy, and to distribute the proceeds of the sale among the several creditors asserting mortgages and privileges against the property.

3°. The rule required certain persons to show cause why inscriptions of mortgages appearing in their names should not be cancelled and erased. These persons were made parties by name and they appear to have been notified. No other persons whomsoever were necessary parties, because the rights of no other persons were attacked or involved. If any person interested was not before the court it will be his business to make that fact

appear when his rights are affected, but it is not the business of a party who is properly before the court, and who asserts an independent, separate, and distinct right, which must be determined between him and the plaintiff.

79 It was proven on the trial that the debt due Gaubert and Richard had been paid in full, and that the judicial mortgages in favor of Goodrich & Co. and R. & E. L. Tanner were long subsequent in date to the conventional mortgage under which the bank claimed and the sheriff sold the property. None of these parties have appealed and the judgment is unquestionably correct so far as they are concerned. The only question is as to the right of the bank, and that depends upon the effect to be given to the conventional mortgage recorded on the 24th Febr'y, 1860. The judicial mortgage recorded on the 28th June, 1867, and the agreement with Cummings recorded on the 7th Sept'r, 1867.

First. So far as the judicial mortgage is concerned it is obvious that it was extinguished by the sale made under the execution issued on the judgment. It was a judgment against Tucker Bros., and their property was seized and sold in satisfaction of that judgment, and the price of

80 the adjudication was apportioned and distributed by the sheriff among the several mortgage creditors, according to their rank and privilege, respectively. It was not in the power of the bank, the seizing creditor, and one of the distributees of the proceeds of that sale, nor was it in the power of Cummings, the purchaser of the property for cash, to revive that judgment or to give force and validity to the judicial mortgage, the mere incident and accessory, after the judgment itself, upon which alone it depended, had been extinguished pro tanto as to the judgment debtors by the sale of their property.

Second. The agreement between Cummings and the mortgage creditors was anomalous and, in some respects, extraordinary. It is clear that Cummings did not grant any mortgage on this property, and as the title of the Tucker Brothers had been divested and had vested in Cummings by the sheriff's sale, adjudication, and registered deed, the extraordinary cir-

81 cumstance is that these creditors of Tucker Brothers were so careful, took such pains to reserve their original rights, and to stipulate that they should, in case of default on the part of Cummings, enforce their original claims and mortgages against Tucker Brothers, and that these claims and mortgages were in no way impaired or effected or novated by the agreement made with Cummings.

Cummings did indeed recognize the original mortgages and privileges as operating on the property, but this recognization of mortgages granted by Tucker Brothers no more created a mortgage against Cummings than his recognition of the judgments against Tucker Brothers made him a party to the judgments, and subjected him and his property to the process of execution as one of the judgment debtors.

Reduced to its just proportions this agreement means that the several creditors who were entitled to the entire proceeds of the sale would not require Cummings to pay them in cash, as he was bound to do by

82 the terms of the sale; that they granted him time to pay; that he recognized their original mortgages and claims as still existing and operating against the property, and obligated himself in case of his failure to meet the payments as stipulated to interpose no objection or obstacle

to the enforcement of their original claims and mortgages against Tucker Brothers, as if no such sale had been made by the sheriff, without the intervention of Tucker Brothers, these creditors; and Cummings agree that the mortgages and judgments which Cummings was bound to pay in cash to the extent of the price of the adjudication should not be paid or discharged, but should continue in force, notwithstanding the fact that the property of Tucker Brothers had been sold, and sold for cash, in satisfaction of these claims and mortgages.

It cannot be pretended that the bank could ever at any time after the 7th September, 1867, have enforced their judgment against Tucker
83 Brothers, by execution or any other process, against the mortgaged property, which had been seized and sold under that judgment, and the moment the right of the bank to seize and sell that property under that judgment ceased that moment the judgment lost its effect as a judicial mortgage with respect to that property, and the rights of the bank were narrowed down to the conventional mortgage of 24th February, 1860.

Third. There is proof in the record that one of the Tuckers and Daunis wrote to the bank acknowledging their indebtedness. We are dealing not with a question of indebtedness, but with a question of mortgage, and a written acknowledgment of indebtedness does not create a mortgage.

It was also proven that Adams & Co., in Nov'r, 1874, offered to pay for the bank claim 30 % on the amount due 7th Sept., 1867. Adams & Co. state in their letter that the bank held a concurrent or second mortgage for $6,269.50; that the inducement for their offer was that
84 Daunis was greatly embarrassed; his property mortgaged for more than its value, and that they were mortgage creditors and were desirous to have the place kept up as a sugar plantation, "which can only be done by continuous and heavy advances." The utmost effect of this is to charge Adams & Co. with knowledge of the claims of the bank, without in any manner giving them additional force or enlarging their effect.

The jurisprudence of Louisiana seems now to be settled that there is no notice or knowledge of a mortgage by which a third person can be affected other than that which is afforded by inscription in the proper office. There has been some difference of opinion as to the correctness of this doctrine, and we think it not amis' to avail ourselves of this occasion to discuss the question somewhat as res nova instead of contenting ourselves, as we might do, with a mere reference to the decisions of this court.

The Civil Code, as originally adopted, article 3314, declare, that
85 "mortgages are only allowed to prejudice third persons when they have been publicly inscribed on records kept for that purpose, and in the manner hereafter directed."

Article 3315 defined the words third persons, as used in the preceding article, to be "all persons who are not parties to the act or to the judgment on which the mortgage is founded, and who have dealt with the debtor either in ignorance or before the existence of this right."

Under the dominion of this article there was room for the opinion that knowledge supplied the place of inscription.

The act of 1855, No. 274, sec. 2, declares that "all sales, contracts, and judgments affecting immovable property which shall not be recorded in the parish where the property is situated shall be utterly null and void except between the parties thereto."

The constitution of 1868, article 123, provides that "no mortgage or privilege shall hereafter affect third persons unless recorded in the parish where the property to be affected is situated."

The act of 1855 is re-enacted in the Revised Statutes of 1870,
86 sections 3188, 3189, and it is embodied in the Revised Civil Code of 1870, articles 2264, '5, & '6.

Article 3342 of the Revised Code is a copy of 3314 of the former editions; but article 3343, which takes the place of the original article 3315 has modified the definition of third persons remarkably. It reads thus:

"By the words 'third persons' used in the foregoing article are to be understood all persons who are not parties to the act or to the judgment on which the mortgage is founded, omitting the last clause, the words which followed 'founded' in the original article, as follows: "And who have dealt with the debtor in ignorance or before the existence of this right."

There can be no doubt that the intention of the law is as declared in the act of 1855, now article 2266 of the Code, in the constitution article 123, and in article 3347 of the Code that a mortgage not recorded in the parish where the property to be affected is situated is utterly
87 null and void, except between the parties thereto.

The inscription therefore is as essential to the validity of the mortgage, except between the parties to the act, as the mortgage is to the validity and effect of the inscription. If the inscription loses its effect, as it may by the lapse of time, the mortgage ceases to have effect except between the parties.

Article 3333 of the original code was as follows:

"The registry preserves the evidence of mortgages and privileges during ten years, reckoning from the day of their date; their effect ceases, even against the contracting parties, if the inscriptions have not been renewed before the expiration of this time, in the manner in which they were first made."

The act of 1843 already referred to, amending this article, makes it the duty of the recorders, on the simple application in writing of the owner, creditor of the owner, or other party interested, to cancel and erase all inscriptions of mortgages which have existed or may exist on their
88 records for a period exceeding ten years, without a renewal of such inscription. (Revised Statutes, secs 450, 3141.)

There was some doubt as the law thus stood whether the mortgage lost its effect by the lapse of ten years from its date, or whether it was the inscription which was thus perempted.

Article 3369 of the Revised Civil Code takes the place of article 3333, and it changes the phraseology of the original article:

"The registry preserves the evidence of mortgages and privileges during ten years, reckoning from the day of its date (not their date, as in the original) its effect (not their effect, as in the original) ceases even against the contracting parties if the inscriptions have not been renewed before the expiration of this time, in the manner in which they were first made."

The ten years are to be reckoned not from the date of the mortgage but from the date of the inscription and the effect of the registry, not of the mortgage, ceases even against the contracting parties, &c. One of
89 the effects of the registry, so long as it exists, is that it preserves

the evidence of the mortgage or privilege, but when the ten years from the date of the inscription have expired without reinscription before that time the registry no longer affords proof of the mortgage or privilege, even as against the contracting parties. As the mortgage is utterly null and void, except between the parties without inscription, it can have no effect whatever as to all other persons after the expiration of ten years without reinscription before that time has elapsed.

Whether this be in accordance with the registry laws of other States or the decisions of other and most authoritative and respectable judicial tribunals elsewhere it is not material to inquire. In most of the States the chief, if not the sole, object of registry is to give notice, to afford certain means of knowledge to those who may be effected by the contracts which are required to be recorded, and under such a system it may well be held that knowledge, as it is the accomplishment of all that the
90 registry could possibly effect, supplies its place and makes it unnecessary.

Under our system the registry preserves the evidence of the mortgage. Without it the mortgage is utterly null and void, except between the parties thereto. The language of the law is plain, and it is not possible to avoid the conclusion that nothing supplies the place of registry or dispenses with it, so far as those are concerned who are not parties to the mortgage, and that when ten years have elapsed after the inscription, without reinscription before that time, those who are not parties to the mortgage may safely contract with the mortgagor as if no such inscription had ever been made, and they may acquire mortgages on the same property from the same mortgagor which will outrank all previous mortgages, the inscriptions of which have lost their effect by the lapse of time.

On the 2d of April, 1870, the date of the mortgage under which John I. Adams & Co. claim, more than a month had elapsed after the
91 inscription of the mortgage under which the bank claims had lost its effect. The mortgage in favor of Adams & Co. outranked that mortgage, and whatever effect the latter may have had during the ten years after the 24th February, 1860, it could have had none, except between the parties thereto, after the expiration of that time.

The sale of mortgaged property under execution for cash in satisfaction of the mortgage debt must release and discharge that property from the operation and effect of that mortgage, and neither the conventional nor the judicial mortgage in favor of the bank had any real existence, so far as the property originally affected by them was concerned, after the sale of that property on the 7th Sept'r, 1867.

Counsel for appellant suggest that the agreement of the 7th Sept'r, 1867, was not discussed in the court below. We find that it was introduced in evidence by them, and we do not see how the judge could have avoided giving it the effect to which it was entitled or deciding that
92 it had not the effect claimed for it. It is clearly not a mortgage, and if it appears as a mortgage in favor of the bank it should be cancelled and erased, so far as the bank is concerned, under the judgment making the rule absolute.

Our conclusion is that all the mortgage rights which the Bank of New Orleans had with respect to the property in question have long since been extinguished, and the judgment appealed from is therefore affirmed with costs.

The labor of examining this voluminous and closely written transcript has been greatly increased by the failure of the clerk to observe the first rule of this court, adopted 31st May, 1869. Some long documents have been copied more than once, and the index of several pages is merely a reference to the papers and proceedings in the case in the order in which they appear in the transcript, without even an attempt at alphabetical arrangement. We think this a proper occasion to call the attention of the clerks to this rule, and to notify them that they incur the risk of
93 having to pay the costs of putting the transcripts in proper order and of arranging the index *is* where they fail to observe the rule of court in that respect.

A true copy:
[SEAL. SUP. COURT.] (Signed) FRANK WALL, *D'y Clerk.*

Exception to report of master on lis pendens.—Filed June 7th, 1877.

United States circuit court.

N. O. NATIONAL BANKING ASSOCIATION
vs.
JNO. I. ADAMS & CO. ET ALS. } No. 7925.

Solicitors for Jno. I. Adams & Co. and the other defendants who have filed the plea of lis pendens herein to complainant's bill of complaint file the following exceptions to the report of J. W. Gurly, master, on reference on plea of lis pendens.

1°. The said master has erred in his finding of fact in this, that the bill in this case does seek to enforce the same mortgage that have been
94 absolutely erased and cancelled by the judgment of the State court; that he has erred also because the same issues are presented to this court by complainant's bill as were passed upon by the State court.

Wherefore they pray that said report be rejected, and said plea of lis pendens be sustained, and complainant's bill dismissed with costs, and for general relief.

(Signed) CLAY KNOBLOCH.
HORNER & BENEDICT,
Solicitors.

Hearing and submission of plea of lis pendens.—Extract from minutes of 8th June, 1877.

N. O. NATIONAL BANKING ASSOCIATION
vs.
JNO. I. ADAMS ET AL. } No. 7925.

This cause came on to be heard on the plea of his pendens, and having been argued by counsel the court took time to consider.

Order of lis pendens overruled.

95 November term, 1877.

NEW ORLEANS, *Saturday, December 29th*, 1877.

Court met pursuant to adjournment.
Present, Hon. E. C. Billings, district judge.

N. O. NATIONAL BANKING ASSOCIATION
vs.
JNO. I. ADAMS ET ALS. } No. 7925.

The court considering that the plea of lis pendens of Jno. I. Adams & Co. is true in fact but insufficient in law, it is ordered that the exception to the master's report be maintained, and that said plea be overruled.

Answer of T. J. Daunis to bill.—Filed February 13, 1878.

United States circuit court, district of Louisiana. In chancery.

N. O. NATIONAL BANKING ASSOCIATION
vs.
JOHN I. ADAMS ET ALS. } No. 7925.

To the honorable the judges of the circuit court of the United States for the fifth circuit and district of Louisiana.

96 The answer of T. J. Daunis to the bill of complaint of the New Orleans National Banking Association, for the use of Nicholas W. Casey, receiver.

This defendant adopts for his own the answer herein filed by John I. Adams et als., and prays that complainant's said bill be dismissed with costs, and for all general relief.

(Signed) CLAY KNOBLOCH.
HORNOR & BENEDICT,
Solicitors.

Answer of F. J. and I. Gaudé to bill.—Filed February 13, 1878.

United States circuit court, district of Lonisiana. In chancery.

N. O. NATIONAL BANKING ASSOCIATION
vs.
JOHN I. ADAMS ET ALS. } No. 7925.

To the honorable the judges of the circuit court of the United States, for the fifth circuit and district of Louisiana.

97 The joint and several answer of François Justin Gaudé and Joachim Gaudé, two of the defendants, to the bill of complaint of the New Orleans National Banking Association, for the use of Nicholas W. Casey, receiver.

They adopt for their own the answer herein filed by John I. Adams et als., and further aver that they are the owners of the property in question herein by purchase from John I. Adams et als. by act before Louis Sylvain Allain, notary public, dated 11th January, 1876, and that when they so purchased there did not exist upon the records of the mortgage office of the parish of La Fourche, where said property is situated, any mortgage or privilege whatever; all which will more fully appear by reference to a certified copy of said act of sale, which is hereto annexed and made part hereof.

That said John I. Adams, Jay L. Adams, and W. H. Renaud are bound to warrant and defend these respondents in their title to said property, and they hereby reserve all their rights against them should judgment go against these defendants in this suit.

98 Wherefore they pray to be hence dismissed with costs and for general relief.

(Signed) CLAY KNOBLOCH,
HORNER & BENEDICT,
Solicitors.

Answer of John I. Adams et als. to bill.—Filed February 13th, 1878.

U. S. circuit court, district of Louisiana. In chancery.

N. O. National Banking Association
vs.
John I. Adams et als. } No. 7925.

To the honorable the judges of the circuit court of the United States for the fifth circuit and district of Louisiana:

The joint and several answer of John I. Adams, Jay L. Adams, and William H. Renaud, three of the defendants to the bill of complaint of the New Orleans National Banking Association, for the use of Nicholas W. Casey, receiver thereof.

99 These defendants, now and at all times hereafter reserving all manner of benefit and advantage to themselves of exception to the many errors and insufficiencies in said bill contained, for answer thereunto, or to so much or such parts thereof as these defendants are advised is material for them to make answer unto, they answer and say:

1°. They admit all the allegations set forth in the first article of said bill.

2°. They believe that all the allegations in the second article of said bill are true.

3°. The admit all the allegations set forth in the third article of said bill.

4°. They admit that all the allegations set forth in the fourth article of said bill are true, so far as the facts set forth are concerned, but they specially deny that the agreement herein rehearsed had any effect to revive or continue in force the mortgage recorded on 24th February, 1860, and could not in law do so, and they also specially deny that any privilege or mortgage was created or came into being upon the de-

100 scribed property by reason of the rehearsed agreement set forth in

complainant's bill; and they allege that by reason of the facts set forth in said fourth section the mortgage recorded on 24th February, 1860, was satisfied, because wholly extinct and inoperative, and ceased to exist as to all parties.

5°. They aver that it is not true that the claims of complainant and the heirs of Godfrey Barnsley are secured under the registry of the aforesaid agreement by vendor's lien and mortgage upon the said property or in any manner.

6°. They aver that they did have a mortgage upon said property, and foreclosed the same by suit No. 1456 in the fifteenth judicial district court for the parish of La Fourche, State of Louisiana, entitled John I. Adams & Co. in lit'n vs. Thos. J. Daunis, and caused said property to be sold by the sheriff, and became the purchasers thereof, and received a clear title therefor, under a decree of said court in said suit, clear of all claims of complain't or others thereon, which decree was obtained contradic-
101 torily with said complainant, all of which will more fully appear by reference to said record of said suit, which is already on file herein and is made part of this bill. These respondents subsequently sold said property to François Justin Gaudé and Joachim Gaudé, who are now in possession, and are the owners thereof.

7°. They aver that they know nothing of the truth or falsity of the allegations set forth in the seventh article of said bill.

8°. They aver that they know nothing of the truth or falsity of the allegations of the eighth article of said bill.

9°. These defendants further show that the mortgage described in complainants' bill, granted by Geo. W. Tucker, acting for Tucker Brothers, recorded in the mortgage office of the parish of La Fourche on 24th February, 1860, was and is barred and extinguished by the prescription of ten years, no reinscription having been made of the same in said mortgage office within ten years as required by the laws of Louisiana.

102 That the judgment alluded to in the third article of complainant's bill was and is also prescribed, barred, and extinguished by the prescription of ten years, having never been revived under the laws of Louisiana.

That the agreement dated 7th September, 1867, rehearsed in the fourth article of complainant's bill, and the inscription thereof, were and are prescribed, barred, and extinguished by the prescription of ten years, no reinscription thereof having been made of the same in the mortgage office within ten years from its date, as is required by the laws of Louisiana, if said agreement ever constituted any mortgage, which is denied.

And these defendants deny all unlawful combination in said bill charged without that any other matter or thing material for them to make answer to, and not herein sufficient' answered, avoided, or denied, is true to the knowledge or belief of these defendants.

All which matters and things these defendants are ready to aver and prove as this court shall direct, and pray to be hence dismissed,
103 with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) CLAY KNOBLOCH,
" HORNER & BENEDICT,
Solicitors.

Replication of complainant to answers of defendants.—Filed February 18th, 1878.

U. S. circuit court, dist. of La.

N. O. NATIONAL BANKING ASSOCIATION
vs.
JOHN I. ADAMS ET ALS. } No. 7925.

The replication of the complainant, The New Orleans National Banking Association, to the answer of the defendants, John I. Adams, Jay L. Adams, W. H. Renaud, F. I. & I. Gaudét, and Thomas J. Dannis, to the complainant's bill.

This repliant, saving unto himself all advantage of exception to the manifold insufficiencies and errors of said answers, for replication thereunto says that he will prove his said bill to be true and sufficient in law, and that the defendants' answers are untrue and insufficient in law to
104 be replied unto. All of which matters and things repliant is ready to prove and maintain as the court shall direct, and he humbly prays as in his said bill he hath already prayed.

(Signed) ROUSE & GRANT,
Solicitors for Complainant.

COMPLAINANT'S EVIDENCE.

Mortgage from Tucker & Bro. to R. Tucker of 24th February, 1860.—Extract from record No. 1456.—Jno. I. Adams & Co. vs. T. J. Dannis.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of La Fourche:

Know all men by these presents that on the twenty-fourth day of the month of February, in the year of our Lord one thousand eight hundred and sixty, and of the American Independence the 84th year, before me, Joseph Kleber Gourdain, recorder and ex officio a notary public, duly commissioned and qualified in and for the parish and State aforesaid, therein residing, and in the presence of Messrs. Victor Richard and Edward J. Bruff, good and competent witnesses, also domiciliated in said parish:
105

Personally came and appeared Dr. George Washington Tucker, of this parish, acting herein in his own name and as the agent of Paschal E. Tucker, of this parish, and Mrs. Sarah L. Tucker, wife of William K. Douglas, of the parish of St. Martin, in this State, by virtue of a power of attorney executed before me, the recorder, on the seventeenth day of December last past, and the said parties are the members of the agricultural firm of Tucker Bros., of this parish. Which said appearer, acting as aforesaid, declared and acknowledged that he and his said constituents are justly and truly indebted to Mr. Robert Tucker, of this parish, in the full sum of twenty thousand dollars for value received, for which he has furnished four several promissory notes under this date, drawn by the said Tucker Brothers to the order of Robert Tucker, and by him endorsed, and

106 each for the sum of five thousand dollars, payable at the Bank of New Orleans, in the city of New Orleans, as follows:

One on the first December and one on the 20th December, eighteen hundred and sixty.

One on the 20th January and the other on the 15th day of February, in the year eighteen hundred and sixty-one, all of said notes bearing eight per cent. per annum interest from their respective maturities, if then not punctually paid.

Which said notes were by me paraphed "ne varietur" to identify them with this act, and delivered to the said Robert Tucker, who acknowledges the receipt thereof.

And in case it shall become necessary to institute legal proceedings for the recovery of the amount of the notes, or any part thereof, the said Tucker Brothers, represented as aforesaid, do hereby agree and bind themselves to pay the fees of the attorney at law who may be employed for that purpose, which fees are hereby fixed at five per cent. on amount sued for.

107 Now, therefore, in order to secure the full and punctual payment of said notes at maturity, and of all eventual interests and attorney's fees as above stipulated, the said Tucker Brothers, represented as aforesaid, moreover declare that they do by these presents mortgage, affect, and specially hypothecate the favor of the said Robert Tucker, present and accepting for himself or any future holder or holders of said notes, all and singular the following described property and slaves, to wit:

1°. A certain sugar plantation situated in this parish, on the left bank of the Bayou La Fourche, at about four miles below the town of Thibodaux, measuring nine arpents, more or less, front by eighty arpents in depth; according to the existing lines, bounded above by the lands of Gaudé Bros. & Co., and below by those of Robert & J. H. Tucker, together with all the buildings and improvements thereon, dwelling-house, sugar-house, mill, and engines, cabin, &c.

2°. The following named and aged slaves, to wit:

(Names of slaves omitted as per agreement filed July 17th, 1880.)

108 And they, the said Tucker Bros., represented as aforesaid, bind and obligate themselves not to sell, mortgage, or incumber the said plantation and slaves to the prejudice of the mortgage herein granted.

And I, the undersigned recorder, do hereby certify that the following mortgages, and none others, are inscribed in my office on the above-described plantation and slaves, to wit:

1°. A conventional mortgage in favor of Joseph B. Richard, or the holder under him of a note of three thousand and eighty $\frac{1}{3}$ dollars, payable in March, 1858, with 8 % per annum interest from maturity. Inscribed 27th December, 1858, bearing on part of land herein described.

2°. A conventional mortgage in favor of the estate of J. Rosemond Le Blanc, to secure a note of said Tucker & Bros. for twenty-five hundred dollars, payable in March, 1859, with eight per cent. per annum interest from maturity until paid.

Thus done and executed the day, month, and year first above
109 written, at my office in the town of Thibodaux.

In faith whereof the parties, witnesses, and I, the recorder, have signed after the reading hereof.

(Original signed.)

TUCKER BROS.
ROBERT TUCKER.
V. RICHARD.
E. J. BRUFF.
J. K. GOURDAIN,
Recorder.

RECORDER'S OFFICE,
Parish of La Fourche:

I hereby certify that the foregoing and above is a true and correct copy of the original act on file in this office, and duly recorded in conventional mortgage-book No. 4, page 259 & seq., on the 24th of February, 1860; and I further certify that as appears by the records of my office the said act has never been reinscribed up to this day, and that Clay Knobloch, attorney of John I. Adams & Co., has this day called upon me to erase and cancel said mortgage from the records of my office, said mortgage being prescribed.

Witness my hand and official seal, at Thibodaux, La., this 22d day of May, A. D. 1875.

[SEAL.] (Signed) L. JOLISSAINT,
D'y Recorder.

110 *Judgment, favor Bank of N. Orleans—Extract from record No. 1456.*

The State of Louisiana, third district court, La Fourche.

IN THE MATTER OF THE BANK OF NEW ORleans
vs.
TUCKER BROTHERS. } No. 578.

This case having been regularly fixed for trial, was taken up and tried, and the law and the evidence being in favor of the plaintiffs and against the defendants:

It is ordered, adjudged, and deceed that the plaintiffs, the presidents and directors of the Bank of New Orleans, do have judgment against and recover of the defendants, the Tucker Brothers, and of each member thereof, his virile share, viz: Dr. George W. Tucker, Paschal Tucker, and Sarah L. Tucker, wife of William K. Douglas, the sum of five thousand dollars ($5,000.00), with eight per cent. interest thereon per annum from the fifteenth day of February, A. D. eighteen hundred and sixty-one,
111 the further sum of five per cent. on the amount above specified as attorney's fees, the costs of protest, and costs of suit.

It is further ordered, adjudged, and decreed that the special mortgage and hypothecation of the plaintiffs upon the property hereinafter described be, and the same are hereby, distinctly recognized as valid, executory, and that in default of payment the same be seized and sold according to law to satisfy the judgment herein rendered, to wit:

A certain sugar plantation, situated in this parish, on the left bank of Bayou La Fourche, at about four miles below the town of Thibodaux, measuring nine arpents, more or less, front, by eighty arpents in depth, according to existing lines, bounded above by the lands of Gaudé Brothers & Co., and below by those of Robert and J. H. Tucker, together with all the buildings and improvements thereon, dwelling-house, sugar-house, mill and engine, cabins, &c.

Thus done, read, and signed in open court, at Thibodaux, parish of La Fourche, on this, the day of June, A. D. one thousand eight hundred and sixty-seven (1867).

112 The fees of E. W. Blake, attorney ad hoc of Sarah L. Tucker, wife of William L. Douglas, fixed at twenty-five dollars ($25), to be taxed.

(Signed) FRED. GATES,
Judge of the Third Judicial District, State of Louisiana.

Mortgage certificate—Extract from record No. 1456.

STATE OF LOUISIANA,
Parish of La Fourche:

RECORDER'S OFFICE.

I, the undersigned, deputy recorder, in and for the parish and State aforesaid, do hereby certify that from the records of this office the hereinafter-described mortgages and privileges appear to exist, and do exist, and bear upon the following-described plantation and accessories, the property of Thomas J. Daunis:

DESCRIPTION OF PROPERTY.

A certain plantation, situated, lying, and being in the State of Louisiana, parish of La Fourche, and known as "Homewood plantation," com-

113 posed of the following tracts of land, to wit:

1°. A certain tract of land in this parish, on the left bank of Bayou La Fourche, at about four miles below the town of Thibodaux, measuring seven arpents, more or less, front, by eighty arpents in depth, according to the existing lines, bounded above by the lands below described and below by lands formerly belonging to Charles C. Williams, now belonging to Riviere & Espenau.

2°. Another tract of land adjoining the one just described, measuring two arpents, more or less, front, by eighty arpents in depth, with a considerable openings of the lines as they recede from the Bayou La Fourche, bounded by lands formerly belonging to Marcellin Adam, now belonging to Francois Gaudé, and below by the lands above described; the two forming one connected sugar-plantation and known as the Homewood plantation.

Also all the buildings and improvements thereon, all the mules, cattle, farming utensils, implements of husbandry, and everything on and

114 attached to the said plantation, without any exception or reservation of any kind.

Mortgages, to wit:

1°. A conventional mortgage with vendor's privilege to secure the payment of a note of said Tucker & Bros., for three thousand and eight $\frac{33}{100}$ dollars ($3,008.33), payable in March, 1858, with 8 % interest after ma-

turity. This mortgage bears on the three lower arpents, by eighty arpents deep. Inscribed February 27th, 1855, and reinscribed Dec. 23rd, 1865, to secure the above balance, $3,008.33.

2°. A conventional mortgage consented by Tucker & Bros, in favor of Robert Tucker or the holders under him, of two notes each, for five thousand dollars, due respectively January 20th and February 15th, 1861, with 8 % interest from maturity. This balance of mortgage bears on the whole of the property above described under caption 1°, and on a number of slaves. Inscribed February 27th, 1860.

3°. A conventional mortgage consented by G. W. Tucker & Bros., in favor of Carol, Hoy & Co., to secure two notes, one for nine thou-
115 sand one hundred and twenty-two dollars ($9,122.00), payable on the 18th of January, 1862, and the other for ten thousand seven hundred and sixty-three $\frac{22}{100}$ dollars ($10,763.22), payable on the 8th of January, 1863, bearing 8 % interest, after maturity, till paid. Inscribed March 5th, 1861.

4°. A judicial mortgage in favor of Campbell and Strong and against G. W. Tucker and others, for three thousand five hundred and thirty-eight dollars ($3,538.00), with legal interest from 14th of March, 1860, and costs of suit. Inscribed June 14, 1860.

5°. A judicial mortgage in favor of Marshall J. Smith & Co. against G. W. Tucker, for three hundred and forty-eight $\frac{47}{100}$ dollars ($348.47), with 8 % interest from the 17th of April, 1860, and costs of suit. Inscribed December 4th, 1861.

6°. A judicial mortgage in favor of Charles Slocomb & Co. and against G. W. Tucker, for three hundred and forty-three $\frac{76}{100}$ doll's ($3,437.76), with 8 % interest from 1st of July, 1860, and costs of suit. Inscribed December 23d, 1864.

116 7°. A judicial mortgage in favor of Goodrich & Co. against Williams and Tucker, for eight hundred and thirty-five $\frac{24}{100}$, with 8 % interest from 2nd of April, 1860, till paid, and costs of suit and of protest. Inscribed January 3d, 1866.

8°. A judicial mortgage in favor of Jerome Gaubert and others on the three lower arpents, by eighty deep, recognizing the vendor's privilege thereon for eleven hundred dollars ($1,100.00), with 8 % interest from April 3d, 1861, and costs of suit. This judicial mortgage covers the special mortgage herein first described. Inscribed July 14th, 1866.

9°. A judicial mortgage in favor of the Bank of New Orleans and against Tucker Brothers for the following sum, each for his virile share, viz: Five thousand dollars ($5,000.00), with eight per cent. interest from Feb'y 15th, 1861, and the further sum of 5 % on said amount, as attorney's fees and the costs of protest and costs of suit. This judicial mortgage is recog-
nized on the property herein described and is part of the special
117 mortgage secondly described above. Inscribed June 28th, 1867.

10°. A judicial mortgage in favor of R. & E. L. Tanner and against G. W. Tucker for ten thousand eight hundred and ninety seven $\frac{40}{100}$ dollars with 8 % interest from 1st of December, 1867, and costs. Inscribed June 28th, 1867.

11°. A mortgage or a renewal of several mortgages, resulting from an act passed Sept. 7th, 1867, before J. K. Gourdain, recorder, then of this parish, in which Albert N. Cummings declares as follows:

That he is the owner of the aforedescribed property under caption 1°, and that instead of having paid cash some of the mortgage-creditors as asserted in sheriff's sale, he has compounded and compromised with the hereinafter-named mortgage-creditors who have agreed to give him time to pay their claims, without, however, impairing or novating their original claims, to wit:

1°. To Jerome Gaubert and others, who have the first mortgage and vendors' privilege, which the said Cummings formally recognized
118 as legal and binding on the 3 lower arpents front by eighty deep. The balance due this day on this claim amount' to $1,851.00 dollars, on which he is granted the following terms, to wit: $500.00 thereof payable January 1st, 1868; $651.00 thereof payable March 1st, 1868, and $700.00 thereof payable March 1st, 1868, with 8% interest on all installments from March 1st, 1868.

2°. To Godfrey Barnsley for the sum of $4,904.40, on which he is granted the following terms, to wit: $1,634.80 thereof payable May 15th, 1868; $1,634.80 thereof payable May 15th, 1869, and $1,634.80 thereof payable May 15th, 1870. These amounts bear 8% interest from Sept'r 7th, 1867; and

3°. To the Bank of New Orleans for the sum of $6,269.50, on which he is granted the following terms, to wit: $2,269.50 thereof payable May 1st, 1868; $2,000.00 thereof payable May 1st, 1869, and $2,000.00 thereof payable May 1st, 1870. Each of said installments bears 8% interest after maturity. Inscribed Sept. 12th, 1867.

119 12°. A conventional mortgage and vendors' privilege in favor of Thomas J. Daunis, consented by Mr. G. W. Tucker for the sum of $2,250.00 represented by three notes for the amounts, and payable as follows, viz:

One for $1,250, payable January 1st, 1870; one for $250, payable, in all, March, 1870, and one for $750, payable, in all, March, 1871.

The said notes all bear 8% interest, the first one from 31st December, 1868, and the other two from and after their respective maturity.

The payment of said notes and interest is secured by special mortgage, under the clause de non alienando, and vendors' privilege on the two upper arpents front by 80 deep of above property. Inscribed May 18th, 1869.

13th. A conventional mortgage and vendor's privilege in favor of Jos. R. Le Blanc, consented by Thomas J. Daunis, for the sum of $2,000.00, represented by two notes for the amount, and payable as follows:

One for $500.00, payable in March, 1870, and one for $1,500, payable in March, 1871. Said notes to bear 8% interest after their re-
120 spective maturity, and are secured on the two upper arpents by 80 deep of above-described property. Inscribed Dec'r 31st, 1868.

14°. A mortgage in favor of John I. Adams & Co. for a principal sum of thirty thousand two hundred and eighty-nine $\frac{27}{100}$ dollars, with such interest at the rate of 8 %, as may have accrued thereon, as per act passed April 2nd, 1870, Emile E. Le Blanc, deputy recorder of this parish. Inscribed April 2d, 1870.

15th. A privilege, pledge, and pawn in favor of John I. Adams & Co., for the sum of seven thousand dollars ($7,000.00), bearing on the crops of the year 1874, made on the above-described plantation. Inscribed June 29, 1874.

16th. A privilege in favor of Thomas McDermott, consented by T. J. Daunis, for the sum of four thousand dollars ($4,000.00), bearing on the crop of the current year, 1875, raised on the above plantation. Inscribed on 2d April, 1875.

121 17th. Such mortgage as may result from the inscription in delinquent tax-payers' book & list, to the following, to wit:

No. 1462. Daunis, Thomas J., 800 acres, bounded by Espenau & Gaudé, assessed at $16,800.

State tax, 243.60; parish tax, 5 mills, $84.00; & 2½ mill tax, $42.00. Inscribed Dec'r 18, 1874.

And no others.

In faith whereof I have granted these presents, under my hand and official seal, at Thibodaux, La., this fifteenth (15th) day of July, A. D. 1875.

(Signed) L. JOLISSAINT, *D'y Recorder.*

Sheriff's adjudication to A. N. Cummings.—Extract from record No. 1456.

STATE OF LOUISIANA:

Third district court, parish of La Fourche.

BANK OF NEW ORLEANS
vs.
TUCKER BROTHERS. } No. 578.

Know all men by these presents that whereas I, Cleophas Lazarde,

122 sheriff of the parish of La Fourche, acting by virtue of a writ of fi. fa. emanating from the above-entitled court and in the above-entitled and numbered case, I seized, on the twentieth day of July, eighteen hundred and sixty-seven, the property below described, to wit:

A certain sugar plantation situated in this parish on the left bank of Bayou La Fourche, at about four miles below the town of Thibodaux, measuring seven arpents, more or less, front, by eighty arpents in depth, according to the existing lines bounded above by lands of E. R. Le Blanc and below by those of Robert & J. H. Tucker, together with all the buildings and improvements thereon, dwelling-house, sugar-house, mill, and engine, cabins, etc., etc. Of which seizure the defendants were duly notified, but the legal delay having expired and they failing to comply with the requisites of the law—

I advertised said property for sale on the third day of August, eight-

123 een hundred and sixty-seven, by inserting notices both in the French and English languages in the Thibodaux Sentinel, a weekly newspaper printed in the town of Thibodaux, and by posting up said advertisements at the court-house door and at divers other public places in the parish, wherein a full description of the property was embodied and the day of sale fixed for Saturday, the seventh day of September, eighteen hundred and sixty-seven, between the hours of 11 a. m. and 4 p. m. at the court-house in the town of Thibodaux.

Terms of sale cash.

As shown by my return in within case the aforesaid property was appraised in accordan e with the law, to be worth for cash the sum of

twelve thousand dollars. Then on said day of sale, September seventh, eighteen hundred and sixty-seven, between the hours of 11 a. m. and 4 p. m., I went to the court-house aforesaid and then and there being read both in French and English languages the aforesaid advertisements and the
124 certificate of mortgages granted by the recorder of this parish, dated September 7th, 1867, showing the following to be the mortgages now existing on the property aforesaid:

Mortgages, to wit:

1°. A conventional and special mortgage with vendor's privilege to secure the payment of a note of said Tucker Bros. for three thousand and eight $\frac{33}{100}$ dollars, payable in March, 1858, with 8 % interest after maturity until paid. This mortgages bears on the three lower arpents by 80 deep. Inscribed 27th February, 1855, and reinscribed 23d December, 1865, to secure such balance as remain due thereon.

2°. A conventional mortgage consented by G. W. Tucker & Bros. in favor of Carol, Hoy & Co., to secure two notes, one for nine thousand one hundred and twenty-two dollars, payable on the 18th January, 1862, and the other for ten thousand seven hundred and sixty-three $\frac{22}{100}$ dollars, payable on the 8th of January, 1863, bearing 8 % interest after maturity until paid. Inscribed against said land on the 5th March, 1861.

4°. A judicial mortgage in favor of Campbell & Strong against
125 G. W. Tucker and others for three thousand five hundred and thirty-eight dollars, with legal interest from 14th May, 1860, until paid, and cost of suit. Inscribed 14th June, 1860.

5°. A judicial mortgage in favor of Marshall J. Smith & Co. against G. W. Tucker for three hundred and forty-eight $\frac{47}{100}$ dollars, with 8 interest from 17th of April, 1860, and costs of suit. Inscribed 4th December, 1861.

6°. A judicial mortgage in favor of Chas. Slocomb & Co. against G. W. Tucker three hundred and forty-three $\frac{76}{100}$ dollars, with 8 % interest from 1st July, 1860, until paid, and costs of suit and of protest. Inscribed 23d December, 1864.

7°. A judicial mortgage in favor of Goodrich & Co. against William and Tucker for eight hundred and thirty-five dollars 24 cents, with eight per cent. interest from 2d April, 1860, till paid. Costs of suit and of protest. Inscribed 3d January, 1866.

8°. A judicial mortgage in favor of Jerome Gaubert and others on the three lower arpents by 80 deep, recognizing the vendors' privilege thereon, for eleven hundred dollars, with 8 % interest from 3d April, 1861,
126 until paid, and costs of suit. This mortgage covers the one herein first described. Inscribed 14th July, 1866.

9°. A judicial mortgage in favor of the Bank of New Orleans against Tucker Brothers for the following sum each for his virile share, viz:

Five thousand dollars, with 8 % interest from 15th February, 1861, and the further sum of five per cent. on said amount, attorneys' fees, and the costs of protest and cost of suit.

This mortgage is recognized on the property herein described and as a part of the mortgage secondly described. Inscribed June 28th, 1867.

10°. A judicial mortgage in favor of R. & E. L. Tanner against G. W. Tucker for ten thousand eight hundred and ninety-seven $\frac{40}{100}$ dollars, with 8 % interest from 1st December, 1867, and all costs of suit. Inscribed 28th June, 1867.

I then announced that the purchaser would be entitled to retain in his hands the amount of the conventional and special mortgage de-
127 scribed in aforesaid certificate under the No. 1, amounting in principal, interests, and costs to eighteen hundred and fifty-one $\frac{10}{100}$ dollars.

I also announced that the purchaser would be entitled to retain in his hands the amount due on the mortgage note described in aforesaid certificate under the number 2 concurrent to the one under which this sale is made.

I then offered the aforesaid plantation for sale, both in French and English languages, and continued to do so for a sufficient length of time, when the said property was knocked off and adjudicated to the last and highest bidder, A. W. Cummings, for and in consideration of the sum of thirteen thousand and twenty dollars, paid as follows, to wit:

1°. The purchaser retained in his hands the sum of eighteen hundred and fifty-one $\frac{10}{100}$ dollars, amount due on the conventional and special mortgage under the numbers 1 and 8 in aforesaid certificate, which amount remain' secured by same mortgage.

2°. The balance of adjudication, eleven thousand one hundred
128 and thirty-seven $\frac{90}{100}$ dollars, is applied to the settlement of the claim of the plaintiff and Godfrey Barnsley, each holding a five thousand dollars note secured by the second mortgage, as appears by the certificate of the recorder, in conformity to the instructions Louis Bush, esq., attorney of the parties, the plaintiffs, and of G. Barnsley.

I applied the said balance to the payment of their claim in the manner following, to wit:

1°. To the bank, to cover principal, interest, and costs, pro rata, six thousand two hundred and sixty-nine $\frac{50}{100}$ dollars.

2°. To G. Barnsly, four thousand nine hundred and four $\frac{40}{100}$ dollars, as will more fully appear by act of compromise and agreement passed between the parties before J. K. Gourdain, recorder, this 7th day of September, 1867.

The recorder of mortgages of this parish of La Fourche is hereby authorized and empowered to cancel and annul all mortgages subsequent
129 to the one under which this sale is made bearing on the said plantation and improvements.

Now, therefore, know all men by these presents that whereas I, Cleophas Lazarde, sheriff of the parish of La Fourche, do, by virtue of the power vested in me by law of the act in such cases made and provided, sell, set over, transfer, and convey to the purchaser, A. W. Cummings, esq., for the sum above stipulated and paid as aforesaid, all the rights, title, and interests the said Geo. W. Tucker, Paschal E. Tucker, and Sarah L. Tucker, wife of William K. Douglas, defendants herein (said defendants composing the firm of Tucker Brothers) had in or on the aforesaid property, and for him to have and hold the same in true and perfect ownership.

Witness my hand at the parish of La Fourche, this the ninth day of September, eighteen hundred and sixty-seven, annexing and cancelling internal-revenue stamps of the United States to the amount of thirteen dollars and fifty cents.

(Signed) C. LAGARDE, *Sheriff.*

130 RECORDER'S OFFICE,
Parish of La Fourche:

I certify the foregoing to be a true copy from the records of this office, inscribed in conveyance-book No. 11, pp. 165 and seq., on September 30th, 1867.

Witness my hand and official seal this 26th day of May, A. D. 1875.

[SEAL.] (Signed) L. JOLISSAINT, *D'y Recorder.*

Exhibit A attached to bill, offered in evidence by complainant, will be found at page 13 et seq. of this transcript.

Evidence of N. W. Casey.—Extract from record No. 1456, *page* 148.

N. W. CASEY, sworn, says:

I am the receiver of the New Orleans National Banking Association.

I addressed several communications to Mr. T. J. Daunis, owner
131 of Homewood plantation, requesting the payment of the amount due under the judgment rendered by the late 3d (now 15th) judicial district court, in the suit of Bank of New Orleans vs. Tucker Bros., No. 578 on the docket of said court, and I have also had personal interviews with him in regard to the same, and he has promised to pay a portion, provided he could get advances made to him wherewith to pay; he never denied the debt; he has never paid or satisfied that judgment and the claim thereunder.

Mr. Renaud, as the representative of the firm of Jno. I. Adams & Co. has had interviews with me, and endeavored to purchase the claim of the Bank of New Orleans—now the New Orleans National Banking Association.

(Witness being shown letter marked "X," stated that he received it from Jno. I. Adams & Co.

Letter marked "X" offered in evidence by defendant.

Plaintiffs in rule objected on the ground of irrelevancy.)

It was in the spring of 1875 that I had an interview with Mr.
132 Daunis, and he admitted that the judgment and claim of the bank was not satisfied.

I have never received anything from him since then.

Letter marked "X," referred to in foregoing deposition of N. W. Casey.—Extract from record No. 1456, *p.* 215.

NEW ORLEANS, *November 2d*, '74.

N. W. CASEY, Esq.,
Receiver N. O. N. B'k'g Ass'n:

DEAR SIR: The Homewood plantation, belonging to Thos. J. Daunis, upon which you hold a concurrent (or second) mortgage for $6,269.50, being encumbered with mortgages, and Mr. Daunis himself being greatly embarrassed, and his property mortgaged for more than its value, and being ourselves interested as mortgage creditors of said Homewood plantation, and desirous to have said place kept up as a sugar plantation, which can only be done by continuous and heavy advances from this time until the crops of '75–'76 (this year's crop being entirely absorbed

133 by balance of advances uncovered last year, '73–'74, and the advances made this year, '74–'75), we make you this proposition to purchase your said claim of $6,269.50 with all your rights, etc., subrogated to us, say 30% cash, or $1,880.85 in full of your claim.

Very truly, yours,

(Signed) JNO. I. ADAMS & CO.

EVIDENCE OF JOHN I. ADAMS & CO., DEFENDANT.

Mortgage from Daunis & Mrs. Tucker to Jno. I. Adams & Co.—Extract from record No. 1456, page 31, et seq.

STATE OF LOUISIANA,

Parish of La Fourche:

Know all men by these presents that on this the second day of the month of April, in the year of our Lord one thousand eight hundred and seventy, before me, Emile Eugene Le Blanc, deputy recorder, duly appointed and qualified in and for the parish of La Fourche, in the State aforesaid, therein residing, and in the presence of Joseph S. Goode and Allen J.

134 Badeaux, good and competent witnesses, personally came and appeared Thomas J. Daunis, esquire, of this parish, herein acting as the agent and legally appointed representative of the agricultural partnership of Daunis & Tucker, composed of himself and Mrs. Margaret Stuart Glover, wife of George W. Tucker, of the same parish, by virtue of an act of partnership passed before me, then acting as a notary public in and for this parish, on the 29th day of December, A. D. 1868, and duly recorded in this office on same day in miscellaneous book No. 4, page 424, which said appearer, acting in the aforesaid capacity, declared and said that after full, complete, and thorough settlement by him made in due and proper form with the house of John I. Adams & Co., of the city of New Orleans, factors of the said agricultural firm, up to to the 23rd March, 1870, the said agricultural firm of Daunis & Tucker remained and is now indebted to the said firm of John I. Adams & Co. in the sum of ($30,289.27)

135 thirty thousand two hundred and eighty-nine $\frac{27}{100}$ dollars, being for money actually advanced, provisions and supplies furnished to and which were all used and appropriated for carrying on, improving, and bettering the plantation of the said agricultural partnership of Daunis & Tucker hereinafter described, and mortgaged to secure the said indebtedness.

And the firm of Daunis & Tucker being so indebted to the said firm of John I. Adams & Co., the said appearer, Thomas J. Daunis, acting for and representing as aforesaid the said agricultural firm, has this day made and executed the six several promissory notes of the said firm of Daunis & Tucker, to their own order, by them endorsed in blank, payable at the counting-house of John I. Adams & Co., in the said city of New Orleans, with eight per cent. interest per annum from the 23d day of March, 1870, until full and final payment for the following amounts, and payable as hereinafter stated, viz:

Five notes for the sum of ($5,000.00) five thousand dollars each,

136 falling due and maturing respectively fifteenth November, first December, twentieth December, (1870) eighteen hundred and seventy,

fourth January and first February, (1871) eighteen hundred and seventy-one, and one note for the sum of ($5,289.27) five thousand two hundred and eighty-nine $\frac{27}{100}$ dollars, falling due and maturing on the first of March, (1871) eighteen hundred and seventy-one, said six several notes forming and representing together the said indebtedness in principal ($30,289.27) thirty thousand two hundred and eighty-nine $\frac{27}{100}$ dollars above mentioned; which said six several notes having been paraphed "ne varietur" by me the undersigned deputy recorder for the purpose of identifying the same with the present act of mortgage, were delivered to John I. Adams, of the city of New Orleans, one of the members of the firm of John I. Adams & Co., who being here present acknowledged the receipt thereof.

And in case it shall become necessary to institute legal proceedings for the recovery of the amount of said notes or any part thereof in
137 principal and interest, the said Thomas J. Daunis, in his aforesaid capacity, binds and obligates himself by these presents to pay the fees of the attorney at law or attorney at law who may be employed for that purpose, which attorney or attorneys' fees are hereby fixed at five per cent. on the amount sued on, and also all costs and charges which may be incurred in such proceedings.

Now, therefore, in order to secure the full and punctual payment of said notes, of all interest accrued and accruing thereon, at the rate and from the date above stipulated, and of any eventual attorney's fees, costs, and charges above mentioned, the said Thomas J. Daunis, acting as aforesaid, does by these presents, specially mortgage, affect, and hypothecate under the pact de non aliendo, till full and final payment of said notes in favor of said firm of John I. Adams & Co., and this to enure to the use and benefit of any and all future holder or holders under said firm of said notes or any of them, the following described property, to wit:

1°. A certain sugar plantation known and designated as the
138 Homewood plantation, situated in this parish on the left bank of Bayou La Fourche, at about four miles below the town of Thibodaux measuring seven arpents, more or less, front by eighty arpents in depth, according to the existing lines, bounded above by lands of mortgagor's just below described, and below by lands formerly belonging to Charles C. Williams but now belonging to Riviere & Espenau.

2°. A certain tract of land situate in this parish, on the left bank of the Bayou La Fourche at about four miles below the town of Thibodaux, measuring two arpents, more or less, in front, by eighty arpents in depth, with a considerable opening of the lines as they recede from the Bayou La Fourche, bounded above by lands formerly belonging to Marcelin Adam, and now belonging to Francois Gaudé, and below by lands of the plantation just above described; together with all the buildings and improvements thereon, or in any wise appertaining to said plantation, such as dwell-
139 ing house, sugar house, mill and engine, cabins, barns, stables, and also all the live stock on and used in the cultivation of said plantation, such as mules, horses, cattle, etc., etc., as well as all improvements and implements of husbandry now on or to be placed on said plantation during the existence of the present mortgage.

The certificate of mortgages required by article 3328 of the civil code of this State is hereby dispensed with by the parties to the present act and I,

the deputy recorder, exonerated from all responsibilities in the premises resulting from the non-production of said certificate.

The said Thomas J. Daunis, acting as aforesaid, moreover consents and agrees that the said John I. Adams & Co., or any future holder or holders under them of said notes or of any of them, shall have the right to institute legal proceedings for the recovery of the amount of said notes, or of any part or portion thereof, or for the foreclosure of this mortgage in any of the district courts in the city of New Orleans, hereby expressly
140 waiving and renouncing the benefit of appraisement and to the benefit of any laws relative thereto, or to the benefit of any laws or part of laws relative to homestead, parcelling, or laws or parts of laws requiring that debtors shall be sued and proceeded against in the parish or district wherein they reside or have their domiciles. This act importing confession of judgment entitling the said John I. Adams & Co., and any holder or holders under them of said notes or of any part thereof to executory process in due form of law, for the amount of said indebtedness, interest, attorney's fees, costs and charges, and the said Thomas J. Daunis, acting as aforesaid, by these presents waives citation and legal delays, as well as all appeals, this being his answer for the purpose.

And now intervenes in this act John I. Adams, esquire, of the city of New Orleans, one of the members of the said firm of John I. Adams & Co., and herein representing the same, who declared and said that he
141 accepts by these presents the present act under all its clauses, conditions, and stipulations, for and in the name of the said firm of John I. Adams & Co. to enure as aforesaid to the benefit of any and all future holder or holder' under them of said notes above described or of any part thereof.

The members composing the firm of John I. Adams & Co. are named and have their domicile as follows, viz, John I. Adams, George W. West, and William H. Renaud, all residents of the city of New Orleans in this State, and Jay L. Adams, esquire, is a resident of the city of New York, in the State of New York.

The U. S. internal revenue stamps to the amount of thirty $\frac{50}{100}$ dollars are hereto affixed and cancelled pursuant to law. Mrs. Daunis' renunciation is given in this act, but the inscription is omitted in this book.

Thus done and passed the day, month, and year first above written, at my office, in the town of Thibodaux.

In faith whereof the parties, witnesses, and I, the deputy recorder,
142 have signed these presents after the reading hereof.

(Signed) T. J. DAUNIS.
ANNETTE DAUNIS.
JOHN I. ADAMS.
J. S. GOODE.
ALLEN J. BADEAUX.
EMILE E. LE BLANC,
D'y Recorder.

RECORDER'S OFFICE, LA FOURCHE.

A true copy from the records of this office, inscribed in mortgage book A, pages 444 to 447, on April 2d, 1870.

Witness my hand and official seal this 25th of May, A. D. 1875.

[SEAL.] (Signed) L. JOLISSAINT,
D'y Recorder.

Petition of John I. Adams & Co. and order of sale.—Extract from record No. 1456, page 31 et seq.

THE STATE OF LOUISIANA:

Fifteenth judicial district court, parish of La Fourche.

JOHN I. ADAMS & CO., IN LIQ.
vs.
THOMAS J. DAUNIS. } No. 1456.

143 To the honorable judge of the fifteenth judicial district of the State of Louisiana, sitting in and for the parish of La Fourche:

The petition of John I. Adams & Co., a commercial firm now in liquidation, domiciliated in the city of New Orleans, parish of Orleans, and composed of Jonn I. Adams, William H. Renaud, George W. West, of the said city and parish, and Jay L. Adams, of the city and State of New York, respectfully represents:

That by public and authentic act passed and executed the 2nd day of April, 1870, before Emile E. Le Blanc, then deputy recorder and ex officio notary public of the parish of La Fourche, and duly recorded according to law on the said 2d day of April, 1870, in mortgage book A, page 444 et seq., of the recorder's office of said parish of La Fourche, a duly certified copy of which act is hereto annexed as part hereof, to which copy is appended the certificate of registry in due form of Louis Jolissaint, present deputy recorder of said parish; Thomas J. Daunis, late of said parish of La Fourche, and now residing in the parish of Terrebonne, acting
144 for himself and as agent and legally appointed representative of the agricultural partnership of Daunis & Tucker, composed of himself and Mrs. Margaret Stuart Glover, wife of George W. Tucker, then of said parish of La Fourche, by virtue of an act of partnership passed before said Emile E. Le Blanc, then acting as notary public, on the 29th December, 1868, and duly recorded in miscellaneous book No. 4 of recorder's office of parish of La Fourche, p. 424 et seq., and certified copy of which act is hereto annexed, did declare, say, and acknowledge that after full, complete, and thorough settlement by him, the said T. J. Daunis, made in due and proper form with the firm of John I. Adams & Co., "your present petitioners," up to the 23d March, 1870, the said agricultural firm of Daunis & Tucker remained and was then indebted to the said firm in the full sum of thirty thousand two hundred and eighty-nine $\frac{27}{100}$ dollars ($30,289.27), being for money actually advanced, provisions, and
145 supplies furnished to, and which were all used and appropriated for carrying on, improving, and bettering the plantation of the said agricultural partnership of Daunis & Tucker, hereinafter described and mortgaged to secure the said indebtedness.

And the said firm of Daunis & Tucker being so indebted to the said firm, the said Thomas J. Daunis acting as aforesaid, did on said 2d day of April, 1870, make and execute the six several promissory notes of the said firm of Daunis & Tucker, to their own order and by them endorsed in blank, payable at the counting house of John I. Adams & Co., with 8 % interest per annum from the 23d March, 1870, until full and final pay-

ment for the following amounts, and payable as hereinafter stated: Five for $5,000 each, payable respectively 15th November, 1st December, 20th December, 1870, 10th of January, and 1st February, 1871; and the sixth note for the sum of $5,289.27, payable 1st March 1871, which said six notes were paraphed "ne varietur" by the said Emile E. Le Blanc,
146 deputy recorder, to identify them with the aforesaid act of 2d April, 1870, as all of which will more fully appear by certified copy of said act hereto annexed, and by reference to act of 5th May, 1871, hereafter referred to, said notes were returned to T. J. Daunis, who substituted new notes in lieu and stead thereof.

That in order to secure the full and punctual payment of said notes and of all interest accruing and accrued, the said Thomas J. Daunis, acting as aforesaid, did by said act of 2nd April, 1870, specially mortgage, affect, and hypothecate under the pact de non alienando, in favor of petitioners or any future holders of said notes, the following described property, to wit:

1°. A certain sugar plantation known and designated as the Homewood plantation, situate in the parish of La Fourche, on the left bank of Bayou La Fourche, at about four miles below the town of Thibodaux, measuring seven arpents, more or less, front by eighty arpents in depth, according to the existing lines, bounded above by lands of mort-
147 gagors below described, and below by lands formerly belonging to Charles C. Williams, but now (April 2d, 1870) belonging to Riviere and Espenau.

2°. A certain tract of land situate in this parish, on the left bank of the Bayou La Fourche at about four miles below the town of Thibodeaux, measuring two arpents, more or less, in front by eighty arpents in depth, with a considerable opening of the lines as they recede from the Bayou La Fourche, bounded above by lands formerly belonging to Marcelin Adam, and now belonging to Francois Gaudé, and below by lands of the plantation just described, together with all the buildings and improvements thereto or in any wise appertaining to said plantation, such as dwelling-house, sugar-house, mill and engine, cabins, barns, stables, and also all the live stock on and used in the cultivation of said plantation, such as mules, horses, cattle, &c., &c., as well as all implements of husbandry now on or to be placed on said plantation during the existence of the present mortgage.

The said act of 2nd April, 1870, importing in express terms
148 confession of judgment, entitling the said John I. Adams & Co. and any holder or holders under them of aforesaid notes, or any part thereof, to executory process in due form of law for the amount of aforesaid indebtedness, interest, and attorney's fees, costs, and charges, the attorney's fees being fixed by said act at the rate of 5 % in favor of said John I. Adams & Co. in case it became necessary to institute legal proceedings for the recovery of the amount of said notes or any part thereof, the said Daunis having obligated himself in his aforesaid capacity to pay said fees.

Petitioner further aver that by public act, certified copy whereof is hereto annexed, passed and executed the 1st of April, 1871, before said Emile E. Le Blanc, deputy recorder, to which act special reference is made, the said Thomas J. Daunis became by valid purchase of the one-half interest

of the aforenamed Mrs. George W. Tucker, the sole and exclusive owner of aforesaid property, of which he, the said Daunis, is still the owner
149 and possessor, and that by said act as part of the consideration of sale the said Daunis assumed in his own name and liability the payment in full of the promissory notes and mortgage aforesaid, as all of which will more fully appear by said act and by copy of notarial act of the 18th April, 1873, hereto annexed.

That by public and authentic act duly recorded, and copy whereof is hereto annexed, passed and executed the 5th May, 1871, before said Emile E. Le Blanc, deputy recorder, the said Thomas J. Daunis obtained an extension of time of one year to pay said indebtedness, to count from the maturities of the notes respectively, and that in order to carry out and render practicable said extension of time, did, on that day (May 5th, 1871), make and execute his six certain promissory notes drawn to his own order, and by himself endorsed and domiciliated at the counting-house of John I. Adams & Co., and all bearing 8 % interest per annum from and after the 23d March, 1870, as follows: 5 for $5,000, each payable 15th
150 Nov'r, 1st & 20th Dec'r, 1871, 10th and 1st Febr'y, 1872, and 6th for $5,289.27, payayble 1st March, 1872, which said notes were identified "ne varietur" with said act, and were given in lieu and stead of the original six notes aforesaid, which were surrendered to the said Daunis, without changing, impairing, or novating the original indebtedness or act of mortgage of 2nd April, 1870, as will more fully appear by said act, certified copy whereof is hereto annexed, and by reference to said last-mentioned six notes, hereto annexed.

The object of said act as therein stated being simply, 1st, an extension of time for the payment of the original indebtedness without affecting the mortgage; and 2nd, the recognition of said T. J. Daunis, assumpsit, by the making of his individual notes in the lieu and stead of those of Daunis & Tucker.

That subsequently, by public and authentic act, passed the 23d February, 1872, before said Emile E. Le Blanc, deputy recorder, certified copy of which act is hereto annexed, a second extension of one year's time
151 from the respective maturities of said notes was asked by said Daunis, and granted by petitioners on same terms and conditions as expressed in the act of extension of May 5th, 1871, without novating, affecting, or impairing the original indebtedness or act of mortgage of 2d April, 1870, and the notes aforesaid being returned to the said deputy recorder, six other notes were made in lieu and stead thereof by said Daunis to his own order, and by him endorsed: 5 for $5,000, payable Nov'r 15th, Dec'r 1st, and 20th, 1872, Jan. 10, & Feb. 1st, 1873; and one for $5,289.27, payable March 1st, 1873; the said notes being identified "ne varietur" with said act of 23d February, 1872, which said last-mentioned six notes are hereto annexed and bear 8 % interest from 23d March, 1870.

That subsequently and finally, by public and authentic act, passed the 18th April, 1873, before said Emile E. Le Blanc, then recorder and ex officio notary public of said parish of La Fourche, certified copy whereof is hereto annexed as part hereof, the said Thomas J. Daunis of the
152 second part, and your petitioners of the first part, declared that John I. Adams & Co., your petitioners, were still the holders and legal owners of the said six last-described notes, and referred to, and that by reason of such ownership, and with the additional interest already ac-

crued upon said notes, the said Thomas J. Daunis, party of the 2d part, is legally indebted to the said John I. Adams & Co., party of the first part, in the full and entire sum of forty thousand two hundred and ninety-one $\frac{20}{100}$ dollars, which amount being fixed by accurate calculation this (18 April, 1873) day made is secured as aforesaid by act of date the 2d April, 1870, above referred to, on the "Homewood" plantation above described; and whereas the said Thomas J. Daunis is desirous of obtaining, and the said John I. Adams & Co. are willing to grant a still further extension of time for the payment of the above indebtedness fixed as above stated:

153 Now, therefore, for the purpose of carrying out their intention, and to represent the said indebtedness of $40,291.20, without novation, and without affecting in the slightest degree the original security for said indebtedness granted by said act of date the 2d of April, 1870, the said Thomas J. Daunis made and executed his twelve certain several promissory notes, hereto annexed as part hereof, drawn to his own order and by himself endorsed, payable at the office of John I. Adams & Co., in the city of New Orleans, and bearing eight per cent. interest per annum from and after their maturities respectively, viz:

Ten of said notes for the sum of three thousand five hundred dollars each, maturing as follows: Two, on the 12th November, 1873; two on the first of December, 1873; two on the 12th December, 1873; two on the 12th of January, 1874; and two on the 1st of February, 1874; one for three thousand dollars payable on the 1st March, 1874, and one for two thousand two hundred and ninety-one $\frac{27}{100}$ dollars, payable 1st March,

154 1874, all said notes being paraphed "Ne varietur" to identify them with acts of the 2d April, 1870, and 18th April, 1873; all previous notes aforesaid having been returned to the recorder, and were made part of the aforesaid act of extension of the 18th April, 1873, as will appear by said act; the effect of said act as therein expressed being simply an extension of time for the payment of the original debt secured by mortgage on Homewood plantation by act of 2d April, 1870, and it was especially agreed that nothing in the present act contained (act 18th April, 1873), shall have even in the slightest degree the effect of novating, impairing, or affecting the mortgage and special hypothecation given as aforesaid to secure the payment of the original six notes, all interest and charges due or accrued thereon executed by Daunis & Tucker, but that the notes given under act of 18th April, 1873, representing the identical debt shall be and are secure in every respect and degree by the original special mortgage granted as above stated on the 2d April, 1870, the said

155 mortgage to be held valid and obligatory as if acts of 18th April, 1873, 5th May, 1871, and 23d February, 1872, had never been passed, each and every section and clause of said act of mortgage of 2d April, 1870, to remain unaffected in any of its parts by the said act of 18th April, 1873.

Wherefore, annexing hereto the last-named twelve promissory notes, and averring that the amount due upon same under the act of mortgage of 2d April, 1870, is the original sum of thirty thousand two hundred and eighty-nine $\frac{27}{100}$ dollars, with 8% interest from 23d March, 1870, as fully set forth in foregoing petition and all the aforesaid authentic acts, your petitioners further averring that said Thomas J. Daunis is justly and truly indebted unto them in that amount and secured by mortgage as aforesaid,

that said indebtedness remains unpaid, and that said Daunis is still owner and possessor of the mortgaged property described in foregoing petition, and in said act of 2d April, 1870, pray for an order of seizure and sale to issue according to law, and after due notice and delay ordering and
156 directing the sheriff of the parish of La Fourche to seize and sell pursuant to law the said mortgaged property to pay and satisfy the said sum of thirty thousand two hundred and eighty-nine $\frac{20}{100}$ dollars, with 8 % *per cent.* per annum interest from the 23d March, 1870, and costs herein.

(Signed) CLAY KNOBLOCH,
Atty's Pet'rs.

Affidavit.

Clay Knobloch, being first duly sworn according to law, deposes and says that he is the attorney of plaintiffs, who are all absent from the parish of La Fourche; that the honorable Taylor Beattie, judge of the fifteenth judicial district of the State of Louisiana, is also absent from the said parish. So help him God.

(Signed) CLAY KNOBLOCH.

Sworn to and subscribed before me this 28th day of July, A. D. 1875.

(Signed) ARTHUR F. KNOBLOCH,
Parish Judge, Parish of La Fourche.

Order.

Considering within petition, affidavit, and notes and documents,
157 let an order of seizure and sale issue according to law and as within prayed for.

Granted at chambers, parish of La Fourche, this 28th day of July, A. D. 1875, in the absence of the honorable Taylor Beattie, district judge.

(Signed) ARTHUR F. KNOBLOCH,
Parish Judge, Parish of La Fourche.

Writ of seizure and sale.—Extract from record No. 1456, *page* 100 *et seq.*

THE STATE OF LOUISIANA:

15th judicial district court, parish of La Fourche.

JOHN I. ADAMS & CO.
vs.
THOS. J. DAUNIS. } No. 1456.

To the sheriff of the parish of La Fourche, greeting:

You are hereby commanded, after due demand and notice of seizure, to proceed to seize and sell pursuant to law the following-described property, to wit:

158 1°. A certain sugar plantation known and designated as the "Homewood" plantation, situated in this parish, on the left bank of Bayou La Fourche, at about four miles below the town of Thibodaux,

measuring seven arpents, more or less, front, by eighty arpents in depth, according to the existing lines, bounded above by lands of mortgageors just below described, and below by lands formerly belonging to Charles C. Williams, but now belonging to Riviere & Espenau.

2°. A certain tract of land situated in this parish, on the left bank of the Bayou La Fourche, at about four miles below the town of Thibodeaux, measuring two arpents, more or less, in front, by eighty arpents in depth, with a considerable opening of the lines as they recede from the Bayou La Fourche, bounded above by lands formerly belonging to Marcelin Adam, and now belonging to Francois Gaudé, and below by lands of the plantation just above described; together with all the buildings and improvements thereon or in any wise appertaining to said plantation, such
159 as dwelling-house, sugar-house, mill and engine, cabins, barns, stables, and also all the live stock on and used in the cultivation of said plantation, such as mules, horses, cattle, etc., etc., as well as all implements of husbandry now on or to be placed on said plantation during the existence of the present mortgage.

To pay and satisfy the sum of thirty thousand two hundred and eighty-nine $\frac{27}{100}$ dollars, with eight per cent. interest from 23d March, 1870, and all costs.

Herein fail not, and make due return of your proceedings herein.

Witness the honorable Taylor Beattie, judge of the aforesaid court, this the twenty-eighth day of July, A. D. 1875.

[SEAL.] (Signed) A. ROVIRA, *D'y Clerk.*

Sheriff's return.—Record No. 1456, *page* 114 *et seq.*

THE STATE OF LOUISIANA:

15th jud'l dist. court, parish of La Fourche.

JOHN I. ADAMS & Co.
vs.
THOMAS J. DAUNIS. } No. 1456.

160 Received the within writ of seizure and sale July 28th, 1875, and executed it on the third day of August of the same year by seizing the property as fully described in the notice of seizure hereto annexed, of which seizure the defendant, Thomas J. Daunis, was duly notified, as shown per return endorsed on the back of said notice of seizure hereto annexed, but the legal delay having expired and he failing to comply with the requisites of the law, I then advertised said property for sale on the 28th day of August, 1875, by insertion of notice in the La Fourche Republican, the official and legal journal of the parish of La Fourche, and by posting up advertisements at the court-house door and at divers other public places in said parish, wherein a full description of the property was embodied, the time, place, terms, and conditions of the sale, and all other requisites of a legal advertisement, the day of sale fixed for Saturday, the 2nd day of October, 1875, between the hours of 11 o'clock a. m.,
161 and 4 o'clock p. m., at the court-house in the town of Thibodaux.

Terms of sale, cash on the spot, in United States Treasury notes.

On the 1st day of October, 1875, previous to the day of sale, the property having previously been subdivided according to law by Pierre A. Thibodaux, surveyor, as will fully appear by the plan hereto annexed;

Then, on the 2d day of October, 1875, between the hours of 11 o'clock a. m. and 4 o'clock p. m., I repaired to the court-house aforesaid, and then and there being I read in a loud and audible voice, before a large gathering of people, the aforesaid advertisements and the certificates of mortgages granted by the recorder of said parish on the 2nd day of October, 1875, which certificate is hereto annexed and making part of this return. I then offered the property for sale, and so continued to offer the same, in separate and distinct tracts according to the plan of survey, when John I. Adams became the last and highest bidder for and in consideration of the
162 sum of seventeen thousand five hundred and nineteen dollars ($17,519.00), as described in sketch and diagram hereto annexed.

The said John I. Adams then submitted to me the written powers of attorney of John I. Adams & Co. in liq., the seizing creditors, authorizing and empowering him to bid in the property in his individual name for the use and benefit of said seizing creditors, and authorizing over and above the legally subsisting preferred privileges and mortgages to retain the balance of the amount of adjudication in part satisfaction of the writ herein.

Wherefore the said John I. Adams tendered the following amount of money, to wit, one thousand and thirty-eight $\frac{34}{100}$ dollars ($1,038.34) to pay:

Sheriff's fees	141 64
Printer's fees	40 50
Clerk's "	20 00
Recorder's "	34 00
Surveyor's "	118 00
Appraiser's "	8 00
Guardian " 61 days, @ 2.00 per day	122 00
State & parish taxes, 1874	326 95
163 R. R. McBride, holder of a note of $500, secured by mortgage fourthly described in certificate of mortgages, to pay balance due on said note	227 25
	$1,038 34

And he claimed the balance of proceeds to pay privilege, &c., in favor of Thos. McDermott, secured on present crop for advances amounting to ($4,000.00) four thousand dollars, and the remainder, to wit, the sum of twelve thousand four hundred and eighty $\frac{66}{100}$ dollars, to be credited on the writ herein.

The said John I. Adams, acting for himself and for the firm of John I. Adams & Co., in liq'n, claimed that the following mortgages, appearing in the certificate of mortgages, were no longer valid mortgages; that the same were prescribed, paid, and had been purged by execution of the judgment in suit of Bank of New Orleans vs. Tucker and Bros., and suit of J. Rosemond Le Blanc vs. Tucker, viz:

1°. The judicial mortgage of Bank of New Orleans, resulting from inscription of judgment on 30th September, 1867; this judgment

164 was executed and the title of Tucker Bros., judgment debtors, was fully divested.

2d. Judicial mortgage of R. & E. L. Tanner, purged by execution at the suit of Bank of New Orleans vs. Tucker Bros.

3d. Conventional mortgage of I. Benoit Richard is paid, and the Richard heirs now so acknowledge.

9th. A judicial mortgage in favor of Goodrich & Co., also purged by the sale and adjudication at suit of Bank of New Orleans vs. Tucker Bros.

10th. Judicial mortgage of Gobert et als. (being conventional mortgage of Richard, sec. No. 3, is paid).

I thereupon refused the tender made to me as aforesaid by John I. Adams, who claimed that his firm had the first mortgage on the property, with the exception of the small balance aforesaid due R. R. McBride, the other note of $1,500.00, concerning with that of R. R. McBride, being in hands of plaintiffs, in execution, and I refused to complete the adjudication to said John I. Adams, and to give him possession.

Whereupon the said John I. Adams, stating that he acted for
165 his firm, notified me that he would rule me and all parties in interest to compel a completion of the adjudication and the erasure of all mortgages.

I retain possession of the property. I then continued to keep said suit during the time prescribed by law, and the seventy days expired this day.

I therefor' return this writ to court, retained a true and correct copy for further proceedings.

October 5th, 1875.

(Signed) L. A. WEBRE, *Sheriff.*

Rule to erase mortgages.—Extract from record No. 1456, *page* 121 *et seq.*

Fifteenth judicial district, parish of La Fourche.

JOHN I. ADAMS & CO., IN LIQ., *vs.* THOMAS J. DAUNIS. } No. 1456.

Now come into court, by their undersigned counsel, the plaintiffs in the above entitled and numbered suit, viz, the commercial firm of
166 John I. Adams & Co., in liquidation, of the city of New Orleans, composed of John I. Adams, George W. West, and William H. Renaud, of said city, and Jay L. Adams, of the city and State of New York, who represent to this honorable court that by virtue of executory process issued in the said suit to satisfy and pay the sum of thirty thousand two hundred and eighty-nine $\frac{29}{100}$ dollars and interest @ 8% from 23d of March, 1870, due relators, plaintiffs in said suit, and secured by conventional mortgage under the pact of de non alienando, as per notarial act before Emile E. Le Blanc, late deputy recorder of the parish of La Fourche, dated, passed, and executed and duly recorded in mortgage records of the said parish of La Fourche on the 2d day of April, A. D. 1870, on the following-described property, to wit:

1st. A certain sugar plantation known and designated as the Homewood plantation, situate in the parish of La Fourche, at about four miles

below the town of Thibodaux, measuring seven arpents, more or
167 less, front by eighty arpents in depth, according to the existing lines, bounded above by lands of mortgagors below described, and below by lands formerly belonging to Charles C. Williams, but now (April 2d, 1870) to Riviere & Espenau.

2nd. A certain tract of land situated in this parish, on the left bank of the Bayou La Fourche, at about four miles below the town of Thibodaux, measuring two arpents, more or less, front by eighty arpents in depth, with a considerable opening of the lines as they recede from the Bayou La Fourche, bounded above by lands formerly belonging to Marcelin Adam and now (April 2d, 1870) to Francois Gaudé, and below by lands of the plantation just described.

Together with all the buildings and improvements thereon or in any wise appertaining to said plantation, such as dwelling-house, sugar-house, mill and engine, cabins, barns, stables, and also all the live stock on and used in the cultivation of said plantation, such as mules, cattle, &c., &c.,
as well as all implements of husbandry now or to be placed on said
168 plantation during the existence of the present mortgage.

The said property, mules, implements, &c., were duly seized, advertized for sale, the landed property divided into lots in conformity to law, and all other forms of law fully complied with, and the day of sale fixed for Saturday, October 2d, 1875, according to law; that on said day of sale your relators, through their senior member, John I. Adams, were the last and highest bidders, for the sum of seventeen thousand five hundred and nineteen dollars, for all aforesaid property; that they then and there offered to comply with their bid by paying the sum of one thousand and thirty-eight $\frac{34}{100}$ dollars to satisfy the costs, taxes, and valid mortgages prior in rank to that of relators, but that Lovincy A. Webre, sheriff of the parish of La Fourche, refused to complete the adjudication, on the ground that the certificate of mortgages showed the existence of judicial mortgages in favor of the Bank of New Orleans, Jeanne Gaubert & Co., Goodrich & Co., and E. L. Tanner & Co., as all that is aforesaid
169 will more fully appear by reference to record in said suit No. 1456 on the docket of this honorable court, and by reference to the notarial acts made part of said record, and by the proces-verbal and return of the sheriff, all of which are specially made part hereof.

Your relators now aver, 1st, that the mortgage claim of Jerome Gaubert & Co has been paid long since and prior to aforesaid sale, and said Jerome Gaubert et als. acknowledge payment.

2d. That as regards the judicial mortgages of the Bank of New Orleans and Goodrich & Co. and E. L. Tanner & Co., the facts are as follows:

The Bank of New Orleans, in suit No. 578 on the docket of the late 3d present judicial district court, recovered judgment on the day of June, 1867, against Tucker Bros., then owners of Homewood plantation, for $5,000, with 8 % interest from 15th February, 1861, and 5 % attorney's fees, with special mortgage recognized on whole nine arpents
170 by eighty deep, as per act before J. K. Gourdain, recorder, dated 24th February, 1860, inscribed on that day and never reinscribed; that said judgment was executed, the property seized, and was sold and adjudicated September 7th, 1867, to A. M. Cummings for $13,025, and the

title of Tucker Bros. fully divested, and that, as will appear by said record 578 and the proces-verbal, the effect of the adjudication purged, erased, and cancelled the junior mortgages of Goodrich & Co. and E. L. Tanner & Co. in so far as the same affected Homewood plantation; that all said judicial mortgages are no longer valid and should be erased and cancelled from the mortgage records of the parish of La Fourche, in so far as they affect Homewood plantation described aforesaid, and composed of three several tracts of land, &c., but that Louis J. Comeaux, recorder of the parish of La Fourche, refuses to erase said mortgages except under order of court, and that until said mortgages are erased the sheriff of La Fourche will not complete adjudication to relators and will not give possession
171 to relators, the sheriff still holding the possession of said property.

1st. Relators further aver that the affairs of the Bank of New Orleans are now in the hands of Nicholas W. Casey, of the city of New Orleans, receiver, appointed under the national-bank act, and that he is the proper party on whom to serve copy hereof and of order on same.

2d. That the firm of Goodrich & Co. is a commercial firm of the city of New Orleans, and composed of John C. Goodrich, Henry L. Goodrich, and Byron M. Pond, all of said city of New Orleans.

3rd. That the firm of R. & E. L. Tanner (not E. L. Tanner & Co., as by clerical error stated aforesaid) is composed of Robert Tanner and Edward L. Tanner, of the parish of Rapides.

4th. That Jerome Gaubert et als., referred to above, are Jerome Gaubert and Marcelin Richard, of the parish of La Fourche:

Wherefore relators move that copies hereof and of order on same
172 be duly served on: 1st. Nicholas W. Casey, receiver of the Bank of New Orleans; 2d. Louis J. Comeaux, recorder of the parish of La Fourche; 3d. Goodrich & Co., of New Orleans; 4th. R. & E. L. Tanner, of Rapides; and 5th. To Jerome Gaubert and Marcélin Richard, of the parish of La Fourche, and, finally, to L. A. Webre, sheriff of the parish of La Fourche; that the said parties be ruled to show cause, on a day to be fixed by this honorable court, why the mortgages appearing of record in the name of the Bank of New Orleans, Goodrich & Co., R. & E. L. Tanner, and Jerome Gaubert et als., should not be erased and cancelled in so far as the same affect Homewood plantation, mules, improvements, &c., fully described in foregoing, and why on petitioners' paying the sum of dollars to satisfy, 1st—prior mortgage of R. R. McBride; 2d, costs of court; 3d, taxes—the sheriff of the parish of La Fourche should not complete the adjudication to John I. Adams, for use and benefit
173 of relators, and give him possession of the property.

(Signed) CLAY KNOBLOCH,
Att'y of Relators.

Order.

Let a rule issue as prayed for and let the parties in interest be cited to hereto on the first Monday of December, 1875, at 12 o'clock meridian. Done in chambers, at the parish of La Fourche, October 19th, 1875.

(Signed) TAYLOR BEATTIE,
Judge 15th Dist. Court.

Exception and answer of N. W. Casey to rule.—Extract from record No. 1456, page 142 et seq.

Fifteenth judicial district court, parish of La Fourche.

JOHN I. ADAMS & CO.
vs.
THOMAS J. DAUNIS. } No. 1456.

Comes now N. W. Casey, receiver of the New Orleans National Banking Association, made a party to the rule herein taken by the said
174 plaintiff on the 19th day October, 1875, and excepting, says:

1st. That he denies the jurisdiction of this honorable court, because he says that on or about 1st day of July, 1871, the said Bank of New Orleans was changed and converted into the New Orleans National Banking Association, under provisions of the act of Congress now called the "national bank act," and succeeded to all its rights in the premises, and its location in the parish of Orleans, and city of New Orleans, and can be sued only in the United States circuit court, or in a State, county, or municipal court in the county or city in which said association is located.

2d. That he denies the jurisdiction of this honorable court to proceed by rule herein to adjudicate the rights and privileges of the corporation represented by him, and avers that the proper proceedings of the plaintiff in rule herein is by direct action.

3d. That proper and necessary parties to these proceedings are not before the court, without which this court cannot proceed to try the issues herein raised.

175 And in case his said exceptions shall be overruled, and reserving the benefit thereof, he pleads a general denial to each and every allegation therein contained, except so far as hereinafter admitted; and further answering, he avers that true it is that the Bank of New Orleans, to whose rights the said association has succeeded, obtained a certain judgment as alleged in rule herein against Tucker Bros., and caused the same to be recorded in the parish of La Fourche, so as to bear upon the property described in rule herein, and is now of record in said parish; and further answering, says that said judgment has never been paid or satisfied and is now in full force and effect, and that the mortgage resulting from the recordation of said judgment is a good and valid lien upon the aforesaid property and has been recognized and acknowledged as such by plaintiffs, and should not be erased and cancelled as prayed by plaintiffs in rule.

Wherefore this respondent prays that said rule be discharged at
176 the costs of said plaintiffs, and he prays for all general and equitable relief.

(Signed) J. D. ROUSE,
" ANDREW J. MURPHY,
Att'ys for Casey, Receiver.

Admissions of counsel.—Extract from record 1456, p. 147.

It was admitted by plaintiffs in rule that on the first of July, 1871, the Bank of New Orleans was changed and converted into the New Orleans National Banking Association, under the provisions of the act of Congress

now called the "national bank act," approved June 3d, 1864, and succeeded to all the rights in the premises, and is located in the city of New Orleans, parish of Orleans, in this State.

Judgment and opinion on rule to erase.—Extract from record No. 1456, page 216 et seq.

177 OPINION ON RULE TO ERASE.

THE STATE OF LOUISIANA:

JOHN I. ADAMS & CO.
vs.
THOMAS J. DAUNIS. } No. 1456.

Rule to erase mortgages and complete adjudication.

Plaintiffs in rule aver that they became the purchasers at sheriff's sale, the 2d October, 1875, of the plantation known as Homewood plantation, situated in said parish, and fully described in their petition. That said sale was made at their instance, and to satisfy their mortgage of date the 2d of April, 1870. Plaintiffs further aver that Lovincy A. Webre, sheriff, refuses to complete adjudication on the ground of the existence of prior judicial mortgages in favor of the Bank of New Orleans, Jerome Gaubert et als., Goodrich & Co., and E. L. Tanner & Co. They pray that said mortgages be ordered erased, and, further, that the sheriff be decreed to complete his adjudication.

In answer to the rule appears one of the parties, N. W. Casey,
178 receiver of the New Orleans National Banking Association, excepting, 1st, to the jurisdiction of this court on the ground of domicile under the national-bank act; 2d, that the proper proceeding is by direct action, and not by rule; 3d, that the proper parties are not before the court.

And in answer he pleads the general denial, and avers that said association succeeded to all the rights of the Bank of New Orleans in certain judgment versus the Tucker Brothers, and that said judgment has never been paid and satisfied, and that said judgment is a valid lien on the said Homewood plantation, and concludes with a prayer of dismissal at plaintiffs' cost.

In regard to the first exception, the New Orleans National Banking Association having no greater rights than the Bank of New Orleans, its author, touching the erasure of its mortgage is concerned, and the Bank of New Orleans being liable to similar proceedings in rule, its successor
179 cannot avail itself of a special clause in an act of Congress to defeat these proceedings in rule.

The second exception is untenable; and also—

The third portion thereof cannot hold, because as far as said association is concerned it is limited to the protection of its own rights, and third parties who have received no notice stand unaffected by .

The facts as shown to the court are that the Bank of New Orleans seized the Homewood plantation and caused the same to be sold under the judi-

cial mortgage against the Tucker Brothers, the 7th day of September, 1867.

The sheriff's return on the writ of fi. fa. and the proces-verbal of adjudication show that the sale as advertised was for cash, and that A. N. Cummings, of New Orleans, became the purchaser for the sum of thirteen thousand and twenty-five dollars.

That in accordance with the announcement by the sheriff, the purchaser retained in his hands the amount of the Gaubert mortgage, and the
180 balance of the adjudication is applied to the settlement of the claim of the plaintiff, to wit:

The Bank of New Orleans and Godfrey Barnsley a conventional mortgage, and in consequence the sheriff sets over to the purchaser all the title of the Tucker Brothers in and to the Homewood plantation.

The act of sale refers to an act of compromise of same date, which act is in evidence.

The National Banking Association being the only party answering the rule, it is only necessary to examine its rights under the said sale.

That a sale was had, under the forms of law relative to judicial sales, under the mortgage of the Bank of New Orleans against the Tucker Brothers this court cannot doubt.

The act of compromise referred to, in which the Bank of New Orleans joined, recites that A. N. Cummings declares that he has this day purchased at sheriff's sale, in the case entitled The Bank of New Orleans vs. Tucker et als., for cash, a certain tract of land, etc., etc.

Besides, the sheriff's adjudication divested the title of the Tucker
181 Brothers, and, as far as the law could, the rights of the Bank of New Orleans had been enforced against the judgment debtor, the debt due by the judgment debtor extinguished, as far as he was concerned, no matter what the bank may have done in a compromise with the purchaser and the judicial mortgagees.

The mortgage note of the bank had in effect come again in the hands of the maker, and any subsequent issue by him would not have renewed the mortgage; and certainly the holding of said note by the judgment creditor after a sale proceeded to collect the same, and a sale made for a sum sufficient to pay said creditor could give no vitality to his mortgage, given to secure the same, and which had been enforced and extinguished.

There can be no mortgage to secure the payment of an extinguished debt. (20 A., 199.)

Right here it may be well to ask if after the 7th of September, 1867, the day of sale, could the Bank of New Orleans have seized and sold
182 again the Homewood plantation? Since that date could they have had at any time, another fi. fa. against Homewood plantation? Most clearly not. So that whether the bank was actually paid or not, their judicial mortgage was extinguished by the sale, and no concurrent or subsequent agreement could recognize as valid that which had no existence. But whether said compromise is valid as to the parties to it, can it affect third persons? Has it revived the bank judgment so as to outrank subsequent mortgages on the same property? To both of these questions, the answer is in the negative.

John I. Adams & Co., having a subsequent mortgage, which mortgage is really first as far as the respondents to the rule are concerned, is entitled to the relief which he claims.

He has become the purchaser of the Homewood plantation, and the sheriff must complete the adjudication on payment to him of the various items as laid in the rule.

183 For these reasons let the rule in this case be made absolute, and let the recorder of said parish be, and he is hereby, ordered to erase and cancel the mortgages appearing of record in the name of the Bank of New Orleans, Goodrich & Co., R. & E. L. Tanner, and Jerome Gaubert et als. in so far as they affect the Homewood plantation, mules, implements, etc.

And upon payment to the sheriff by relators the sum of one thousand thirty-eight $\frac{34}{100}$ dollars he is herein ordered to complete his adjudication of the property to them and to give possession of the same.

(Signed) JOHN S. BILLIN,
Judge ad hoc 15 *Judicial District Court.*

Judgment on rule.

Fifteenth judicial district court, parish of La Fourche.

JOHN I. ADAMS & CO., IN LIQ.,
vs.
THOMAS J. DAUNIS.

The above entitled and numbered case, the rule to show cause against Bank of New Orleans et als., to erase certain mortgages and for
184 completion of adjudication to John I. Adams for use of John I. Adams & Co., in liquidation, the plaintiffs having been regularly taken up and tried pursuant to assignment, and the law and the evidence being in favor of plaintiffs, and for the reasons assigned in open court in the written opinion of the court on file in said cause, it is ordered, adjudged, and decreed that the rule sued out by plaintiffs be made absolute; that Louis J. Comeaux, recorder of the parish of La Fourche, be, and he is hereby, ordered to erase and cancel the mortgages appearing of record in the name of the Bank of New Orleans, Goodrich & Co., R & E. L. Tanner, and Jerome Gaubert et als. in so far as they affect Homewood plantation; and on payment to the sheriff of the sum of one thousand and thirty-eight $\frac{34}{100}$ dollars, the said sheriff is hereby ordered to complete his adjudication of said Homewood plantation to plaintiffs herein and place them in possession of same; the said plantation being fully described in the rule herein;
185 the said plantation being composed of the tracts of land as described in the rule.

Thus done, read, and signed in open court, parish of La Fourche, this 18th day of December, A. D. 1875.

(Signed) JOHN S. BILLIN,
Judge ad hoc.

Note of evidence on cross-bill.—Filed June 10, 1878.

NEW ORLEANS NATIONAL BANKING ASSOCIATION, N. W. Casey, receiver,
vs.
JOHN I. ADAMS & CO. } No. 7925.

Evidence on cross-bill.

The evidence heretofore offered by complainant, N. W. Casey, receiver, Exhibit A, referred to in cross-bill copy in transcript.

Note and protest, and endorsements thereon. Letters from Barnsley, Schwartz, & Clarke, Bayne, and Renshaw to Tucker & Daunis, and letters of said Tucker and Daunis.

Testimony of Charles H. Schwartz.

186 *Note referred to in foregoing minute of evidence.—Filed June* 10, 1878.

$5,000] PARISH OF LA FOURCHE, *February 24th*, 1860.

On the twentieth day of January next (1861) we promise to pay to the order of Mr. Robert Tucker, at the Bank of New Orleans in the city of New Orleans, five thousand dollars, for value received, with eight per cent. per annum interest from maturity until paid.

(Signed) TUCKER BROS.

(Written across the face:) "Ne varietur." J. K. Gourdain, recorder.

(Endorsed:) 3563. Tucker Bro.; 5,000; 20, 23 Jany., 1861, No. 148

Pay to the order of Thos. C. Gilmour.

ROBERT TUCKER.

No. 793. Filed July 6th, 1867. J. W. Knobloch, d'y cl'k.

WILLIAMS & TUCKER.

(Erased:) THOS. C. GILMOUR.

This note is still due and unpaid.

GEO. W. TUCKER.
T. E. TUCKER.

NOV. 25, 1866.

Protest referred to in foregoing note of evidence.—Filed June 10, 1878.

UNITED STATES OF AMERICA,
State of Louisiana:

187 By this public instrument of protest, be it known that on this twenty-third day of January, in the year one thousand eight hundred and sixty-one, at the request of William S. Mount, esq., cashier,

holder of the original note, whereof a true copy is on the reverse hereof written, J. Walter Hicks Peters, a notary public in and for this city and parish of Orleans, State of Louisiana, aforesaid, duly commissioned and sworn by my deputy, P. Bienvenu, presented the said note at the Bank of New Orleans, in this city, where it is made payable within banking hours, and to the proper officers, and demanding payment was answered that no funds had been placed there to pay.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest as well against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests suffered or to be suffered for want of payment of the said note.

188 Thus done and protested in the presence of Placide Bienvenu and Thomas J. Castell, witnesses.

(Signed) WALTERS H. PETERS,
Not. Pub.

T. J. CASKELL.
P. BIENVENU.

A true copy of the original on file in my office.

In testimony whereof I grant these presents, under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.] (Signed) WALTER H. PETERS,
Notary Public.

Letters from G. Barnsley to Tucker, referred to in note of evidence on cross-bill, & filed June 10, 1878.

NEW ORLEANS, *4th April*, 1871.

Dr. GEORGE W. TUCKER, *Thibodaux:*

DEAR SIR: I was glad to learn to-day from Mr. Thos. J. Dannis that you and he made an amicable arrangement on Friday last, rendering a sale of the plantation on Saturday unnecessary, and that he has purchased your interest in it, and as I understood become sole owner. He *who*

189 mentioned having made an agreement with Messrs. John R. Adams & Co. and Mr. Cavavoe, and expressed a desire to do the same with myself regarding the mortgage I have, but having promised you that I would not make any without hearing from you, I shall await your reply to this before entering into any positive contract, & remain.

Dear sir, very truly, yours,

GODFREY BARNSLEY.

NEW ORLEANS, *6th May*, 1868.

Dr. GEORGE W. TUCKER, *Thibodaux:*

DEAR SIR: Your favor of the 1st inst. was duly received, and its contents have had careful attention. Yesterday I had a brief conversation with Mr. Cavavoe, who is now president of the Bank of Orleans, and we agreed to accede to your request. Of course when you are able to make

any payments it will be done pro rata. I have a copy of the agreement, which shows the mortgage you allude to has priority.

190 It gives me much pleasure to learn your crop prospects are good, and hope you may reap a bountiful harvest.

Should you come to the city before the 25th inst. it will give me great pleasure to see you. And with my best wishes for your prosperity, remain, dear, sir,

Very respectfully, yours,

GODFREY BARNSWELL,
D. T. Ex'r.

NEW ORLEANS, *24th Nov.*, 1868.

Dr. GEORGE W. TUCKER, *Thibodaux:*

DEAR SIR: This morning Mr. Cavavoe informed me the board of the Bank of New Orleans had acceded to your proposition, and beg to say it gives me pleasure to do the same, remaining,

Very respectfully, yours,

GODFREY BARNSLEY,
D. T. Ex'r.

191 *Letters from C. H. Schwartz to Thos. J. Daunis, referred to in note of evidence, & filed June* 10, '78.

NEW ORLEANS, , 1874.

T. J. DAUNIS, Esq., *Thibodaux:*

DEAR SIR: I am in receipt of your favor of 15 inst., and duly note from it your proposal to pay the interest on the mortgage now due on Oct. 1st next. While I am disposed to grant you all reasonable facility & extension of time, still I cannot enter into an arrangement of this kind without previously consulting with the lawyers of the Gilmour estate, & therefore your proposal being confidential, I must ask your leave to communicate the contents of your letter to Messrs. Clarke, Bayne & Renshaw.

I am pleased to hear your crop prospects are good and that you did not suffer by the overflows.

Yours, very truly,

C. H. SCHWARTZ.

FEB. 16, '5.

T. J. DAUNIS, Esq.,
Houma Branch P. O., La.:

192 DEAR SIR: I am in receipt of your favors of 20th ul'to and 11 inst., and regret to hear by the latter of illness in your family.

In a late New Orleans paper I noticed your name among the hotel arrivals in that city, & hope, therefore, you will very soon make me a remittance for at least a portion of the overdue interest on mortgage on your plantation. You are aware that I am accountable to the trustees of the Gilmour's estate, and there is a limit to my power of granting indulgence to you in this matter.

Yours, very truly,

C. H. SCHWARTZ.

NEW ORLEANS, *Mar.* 11, 1874.

T. J. DAUNIS, Esq., *Thibodaux:*

DEAR SIR: I beg to inform you that the executors of the late Thomas C. Gilmour have appointed me their agent in place of my father-in-law, Mr. G. Barnsley, who died in June last, and should be glad to
193 hear from you regarding the interest on the mortgage which was due in May last.

Should you happen to visit the city I should be please' to see you, and to this end will mention that I have removed from the office formerly occupied by Mr. Barnsley, and am now to be found at room No. 10 over the Cotton Exchange, in Gravier street.

Yours, very truly,

C. H. SCHWARTZ,
Lock-box 906.

JAN. 14, '5.

T. J. DAUNIS, *Houma Branch P. O.:*

DEAR SIR: I was pleased to hear from you to-day, and duly note contents of your letter of 9th inst. Your prolonged silence has somewhat surprised me, and, although unwilling to adopt extreme measures, in a few days would have felt constrained to authorize the lawyers of the Gilmour estate to take what steps they thought proper and requisite in
194 the matter.

I now beg to say that, in consideration of the encumbrances mentioned in your letter, I am willing to accede to the arrangement you have made with the receiver of the N. O. Bank'g Asso., viz: to pay one-half interest of the overdue 2 years' interest on mortgage on your plantation, and extend time for payment of the remainder for a reasonable period to allow you to work the plantation. I rely upon you promptly remitting to me the 1 year's interest.

Yours, very truly,

C. H. SCHWARTZ,
Agent Est. T. C. Gilmour.

DEC. 10, '4.

T. J. DAUNIS, Esq., *Thibodaux:*

DEAR SIR: Your valued favor of 2d inst. came to hand in due course, and contents have been noted. I regret to hear that the frost of Nov'r 2. had done some injury to the cane.

195 You may remit the interest to me on bank check in New York.

Thanking you for your kind wishes, I remain, dear sir,

Yours, truly,

C. H. SCHWARTZ.

ST. LOUIS, *Nov.* 28, 1874.

T. J. DAUNIS, Esq., *Thibodaux, La.:*

DEAR SIR: I wrote to you on the 28th ult'o to remind you of the payment of the interest on mortgage on your plantation held by estate of T. C. Gilmour, & regret to be still without a reply from you.

I should regret to be obliged to resort to legal measures to enforce the payment of said interest, but beg to say that if not paid by Christmas I shall be under the necessity of placing the matter into the hands of the legal advisers of the estate at New Orleans.

I subjoin a statement of the interest due to May 15, 1874, amounting to $784.70, exclusive of what may be due in addition to place the es-
196 tate on an even footing with the N. O. Nat'l Banking Association, the amount of which I have not yet ascertained.

Awaiting your reply, I remain, dear sir,

Yours, truly,

C. H. SCHWARTZ,
Agent Est. T. C. Gilmour.

Statement of interest.

1st installment, due	15	May,	1868	$1,634	80
2d do.	" 15	"	1869	1,634	80
3d do.	" 15	"	1870	1,634	80
				$4,904	40
2 years' interest to May 15, 1874, 8 %				$784	70

ST. LOUIS, *October* 28, 1874.

T. J. DAUNIS, Esq., *Thibodaux:*

DEAR SIR: I wrote to you last on June 23d from Woodlands, Ga., and have not since had the pleasure of hearing from you.

I now beg to inform you that the depressed state of business has induced me to leave New Orleans and remove to this place, where
197 I have established myself since 1st inst., as enclosed card. I shall continue as heretofore to attend to the affairs of the estate of the late T. C. Gilmour, and shall be glad to hear from you at your earliest convenience with regard to the payment of interest on the mortgage on your plantation held by the Gilmour estate. You will, no doubt, appreciate my indulgence in this matter and the necessity of promptitude on your part. You may remit the interest to *and* in a bank check on New York, or in currency & express if more convenient.

From all the accounts I have read it appears the sugar crop in Louisiana is unusually fine.

Hoping to hear from you soon, I remain, dear sir,

Yours, truly,

C. H. SCHWARTZ,
Agent Est. T. C. Gilmour.

Letters from Clarke, Bayne & Renshaw to Daunis, referred to in note of evidence, & filed June 10, '78.

NEW ORLEANS, *July* 16, 1875.

Mr. T. J. DAUNIS, *Terre Bonne Station, Parish of Terre Bonne:*

198 DEAR SIR: We should be glad to know what arrangements you can make for the payment of the debt due to Mr. Barnsley and

the succession of Gilmour. You will oblige us if you will answer by return mail, as we shall be compelled to take steps to collect the debt unless some satisfactory arrangement can be made.

Yours, truly,
(Signed) CLARKE, BAYNE & RENSHAW.

NEW ORLEANS, *July* 23, 1875.

T. J. DAUNIS, Esq., *Belle Grove Plantation, Terre Bonne Station:*

We have your favor of the 19th ult'o in reference to the debt due to the N. O. Nat. B'k'g Association & to Schwartz, agent, in which you say that Mr. Casey assured you that he and Mr. Schwartz would give you time to make your crop. We do not know anything of such agreement, but we do not understand that there is any desire to press you unreasonably, and both of these parties would, we think, be willing to wait if you can give assurance that you will be able to pay the whole or part of the debt early in the fall.

199

Col. Casey intimated that he would do with his claim as we did with ours. We desire to know as definitely as possible what you propose as the best that you can do for the settlement of these debts, and we are disposed to meet you on such reasonable terms as will protect the interest of our clients.

Yours, truly,
(Signed) CLARKE, BAYNE & RENSHAW.

Letters from Daunis to Clarke, Bayne & Renshaw, referred to in note of evidence, and filed June 10, 1878.

BATTLE GROVE, LA., *July 19th*, 1875.

Messrs. CLARKE, BAYNE & RENSHAW, *N. Orleans:*

GENTS: Y'r favor of the 16th has been received. In answer I would state that at this season of the year I am not able to do anything. When last I saw Mr. Casey, of the N. O. N. B. Association, he (some 4 months past) *he* assured me that Mr. Schwartz would (as he intended doing) give me till crop. However, I presume they have not changed their mind. Regretting my inability to assist you,

200

I remain, y'r', very truly,

T. J. DAUNIS.

BATTLE GROVE, LA., *July 27th*, 1875.

Messrs. CLARKE, BAYNE & RENSHAW, *N. Orleans:*

GENTS: Y'r favor has been received. I will be in y'r city shortly. Will call on you.

Very truly,

T. J. DAUNIS.

Letters from Daunis to G. Barnsley, referred to in note of evidence, & filed June 10, 1878.

THIBODAUX, LA., *May 3d*, 1870.

GODFREY BARNSLEY, Esq., *New Orleans:*

DEAR SIR: You will please let me know the amount of interest due you by Dr. G. W. Tucker.

201

Yours, truly,

T. J. DAUNIS.

THIBODAUX, LA., *April* 16, '72.

GODFREY BARNSLEY, Esq., *N. O.:*

DEAR SIR: The interest on the Tucker mortgage will be due next month. I am necessarily compelled to be out of the State about the tenth (10th). I will then call on you relative to the above business. I hope this will not incommode, & will be satisfactory.

Yours, truly,

T. J. DAUNIS.

THIBODAUX, LA., *May 4th*, 1872.

GODFREY BARNSLEY, Esq., *New Orleans:*

D'R SIR: Passing through New Orleans on yesterday, I called at your office twice during the day, but had not the pleasure of seeing you,
202 the office being closed. Having made arrangements with the bank (as to the Tucker debt) to receive the interest in advance as usual, I trust such favor will be accorded me by you also, and will then come down at once. I am unable this year to make you a better offer; the little amount that I made over and above expenses went towards buying the share of Dr. Tucker, &c., and I have only been able to obtain advances to make the crop. The prospects, so far, are good—say from two (200) to 225 hhds. of sugar next fall.

Hoping an early answer, I remain,

Yours, truly,

T. J. DAUNIS.

Letters from Daunis to Schwartz, referred to in note of evidence, & filed June 10, 1878.

BATTLE GROVE, LA., *Ja'y* 9, '75.

Mr. C. H. SCHWARTZ, *St. Louis:*

MY D'R SIR: Your last favor was received in due time. Since
203 last meeting you I have been obliged to see Mr. Casey (receiver of the N. O. N. Bank) and come to some agreement with him as to the interest now due. Being unable to pay both your interest, he has consented to receive one year's interest and to wait on me for the other, thus giving me a chance to continue. I consequently must ask the same indulgence from you, without which I will not be able to continue. I informed Mr. Casey that I would write you and let him know as soon as I heard from you. Consequently, before taking any steps towards another crop, I must hear from you. Please let me know if you will grant me the same indulgence as the bank. I await your reply with hopes of having a satisfactory answer.

The freeze of October cost the sugar crop most.

Yours, very truly,

T. J. DAUNIS,
Houma Branch P. O.

BELLE GROVE PLANTATION,
December 2d, 1874.

C. H. SCHWARTZ, Esq.,
St. Louis, Mo.:

204 MY D'R SIR: Y'r two letters of last month have both been duly rec'd. If I have delayed giving you an answer to the first 'tis because I was desirous of seeing as much of the crop made as possible in order that I might be able to write you definitely as to my situation. We are now about half through, and will no doubt be in a condition to write you satisfactorily by Christmas. I assure you I do sincerely appreciate y'r kindness, and will do all that I can to close the interest on a satisfactory basis. The ice that we had on the 2d Nov'r has done much harm, having killed the cane in its full vegetation. Hoping you will do a good business in y'r new house, I remain,

Y'rs, very truly,

T. J. DAUNIS.

BELLE GROVE, LA., *Feb'y* 4, '75.

Mr. C. H. SCHWARTZ, *St. Louis:*

205 MY D'R SIR: I was exceedingly vexed at my inability to leave home (on account of the serious illness of Mrs. Daunis) in order to forward you the am't interest as agreed. I have also written Mr. Casey (for the bank) that I would do my utmost (sickness in my family not preventing) to be able to absent myself, so as to close this business by about the first of the coming month. I pray you will readily understand my position and make due allowance. Hoping you will appreciate my position, I remain,

Very truly, yo'rs,

T. J. DAUNIS.

THIBODAUX, LA., *June* 15, 1874.

Mr. C. H. SCHWARTZ, *Hall's Mills, La.:*

MY D'R SIR: Y'r kind favor of has been received. Since I have seen you I have made arrangements to continue the cultivating of the crop now on land on the Tucker place, and inasmuch as you hold the first mortgage of the place I desire to know (independent of the bank, for her claims are secondary) if you will agree to accept the interest overdue on the first of October next, and thus give me a chance to make
206 one. This I propose to do outside of the knowledge of the bank, and wish it to be considered as confidential. If satisfactory to you, I will have no trouble of going ahead. The crop there is very fine, and have had no harm from the water.

Hoping to hear from you, I remain,

Yours, truly,

T. J. DAUNIS.

BELLE GROVE, LA., *J'y 30th*, 1875.

Mr. C. H. SCHWARTZ, *St. Louis:*

DEAR SIR: Y'r favor of the 10th inst. is at hand. In answer please accept my thanks for y'r kind indulgence. I propose visiting New Or-

leans during the coming week ; I will make due steps to remit you. We are having most unusual wet weather here, and in fact have had such since Christmas. Politics are as bad as ever.

Y'rs, very truly,

T. J. DAUNIS.

207 *Letters from Geo. W. Tucker to G. Barnesley, referred to in note of evidence filed June* 10, 1878.

THIBODAUX, 10*th Ap'l*, 1871.

GODFREY BARNSLEY, Esq., *New Orleans:*

MY DEAR SIR: Your favor of 4th inst. reached here during an absence from home of some days, which has caused delay in my replying. I have intended to write to you to inform you that I had arranged my business with Mr. Daunis, selling my interest to him. I shall therefore have no occasion to ask you to extend any indulgence to me with regard to the claims which you hold. Believe me, my dear sir, I do thank you very sincerely for the kindness which you have shown me in the matter, and am, with high regard,

Very resp'y & faithfully yours,

GEO. W. TUCKER.

I shall be pleased to have you make that visit to La Fourche, and wish you would notify me of it in advance.

THIBODAUX, 24*th March*, 1871.

GODFREY BARNSLEY, Esq., *New Orleans:*

208 MY DEAR SIR: When in New Orleans a short time since I called to see you, but found you absent from your office. I expect to be in N. O. on the 27th inst.—Monday—and wish to see you about your claim. My partner, to whom I sold a half interest, he obligating himself to pay the mortgage claims and advance the money necessary to run the place to the end of the year 1872, also giving him the management of the business, has allowed the property to become very much indebted to Messrs. John I. Adams & Co., and I find that I shall have to take charge of the business to keep it from going to ruin, and I propose visiting N. O. with the view of putting the affairs of the concern into a shape that will enable me to meet them. I will then explain the details, and I trust that you will be prepared to extend me some indulgence in the matter.

In the mean time believe me, very faithfully,

Yours, &c.,

GEO. W. TUCKER.

209 *Deposition of Chas. H. Schwartz, referred to in note of evidence, & filed June* 10, 1878.

U. S. circuit court.

N. O. NAT'L BANKING ASSOCIATION *vs.* JOHN I. ADAMS & CO. ET ALS. } No. 7925.

Charles H. Schwartz, being duly sworn, deposeth and saith that he

knew the late Thomas C. Gilmour and Godfrey Barnsley in their life-time and the families of both; that Mr. Gilmour left a wife, Mrs. Anna Goodwin Gilmour (who was a daughter of Godfrey Barnsley), and two children, Murray and Julia, who married F. Murray Dawson. Mr. Gilmour left a will appointing Wm. Watson Christian and Henry Scott Gilmour, executors and trustees. Mr. Godfrey Barnsley was the agent of the executors and as such held the claim in this suit. Neither he or his heirs had any other interest therein. His heirs have, to the knowledge of deponent, who married one of them, Julia, daughter, disclaimed all interest therein. Mr. Barnsley has repeatedly told me that in the
210 proceedings he only represented Mr. Gilmour's estate, and as such he executed the act before Joseph Kleber Gourdain, recorder of La Fourche, on 7th September, 1867; that he then held the note of Tucker et als. referred to in said act as such agent.

(Signed) C. H. SCHWARTZ.

Sworn to and subscribed before me this 22d day of March, 1878.

[SEAL.] (Signed) ALFRED INGRAHAM,
Com'r of the United States.

Submission of cause.—April term, 1878.

NEW ORLEANS, *Monday, June* 10, 1878.

Court met pursuant to adjournment.

Present, Hon. E. C. Billings, district judge.

N. O. NATIONAL BANKING ASSOCIATION
vs.
JOHN I. ADAMS ET ALS. } No. 7925.

By written consent of all parties this cause is submitted on the evidence on file and briefs now furnished

211 *Decree dismissing bill and cross-bill.—Entered and filed April 3d,* 1880.

U. S. circuit court, district of Louisiana. November term, 1879.

NEW ORLEANS NATIONAL BANKING ASSOCIATION
vs.
JOHN I. ADAMS & CO. ET ALS. } No. 7925.

This cause came on to be heard on the bill, pleas, and answers, cross-bill, pleas and answer to cross-bill, replications, exhibits, depositions, and other proceedings in the cause.

On consideration whereof, it is ordered, adjudged, and decreed that complainant's bill of complaint be, and is hereby, dismissed, with costs; and that the cross-bill herein filed by William Watson Christian and Henry Scott Gilmour, executors and trustees of the estate of Thomas C. Gilmour, deceased, and Julia Gilmour and F. Massey Dawson, her husband, and Murray Gilmour, sole heirs-at-law of said Thomas C. Gilmour and Mrs.

Anna Goodwin Gilmour, widow of Thomas C. Gilmour, be, and
212 the same is hereby, dismissed, with costs.
April 3d, 1880.
(Signed) EDWARD C. BILLINGS, *Judge.*

Motion for appeal and order.—Entered and filed April 10, 1880.

United States circuit court, district of Louisiana.

NEW ORLEANS NATIONAL BANKING ASSOCIATION
vs.
JOHN I. ADAMS ET ALS. } No. 7925.

Now come the New Orleans National Banking Association, complainant, and Mrs. Anna Goodwin Gilmour, Julia Bernard Barnsley, Charles H. Schwartz, Lucien Barnsley, George Scarborough Barnsley, George Forrest Reid, by his next friend, Charles H. Schwartz, William Watson Christian and Henry Scott Gilmour, executors and trustees of the estate of Thomas C. Gilmour, Julia Gilmour and her husband, F. Massey Dawson, and Murray Gilmour, defendants, who have filed their cross-bill
213 herein by their solicitors, Rouse & Grant, and Bayne and Renshaw, and suggesting that there is error to their prejudice in the final decree entered herein against them on the 3d day of April, 1880, and that they desire to take an appeal from said decree to the Supreme Court of the United States, with supersedeas:

It is ordered that an appeal be granted to movers to the Supreme Court of the United States, returnable on the first day of the next term thereof, to operate as a supersedeas, upon their giving bond in the sum of five hundred dollars, according to law.

Bond for appeal.—Filed April 20th, 1880.

UNITED STATES OF AMERICA:

Know all men by these presents that we, The New Orleans National Banking Association, Mrs. Anna Goodwin Gilmour, Julia Bernard Barnsley, Charles H. Schwartz, Lucien Barnsley, George Scarborough Barnsley, George Forrest Reid, by his next friend, Charles H. Schwartz, William Watson Christian and Henry Scott Gilmour, executors and trustees
214 of the estate of Thomas C. Gilmour, Julia Gilmour and F. Massey Dawson, her husband, and Murray Gilmour, principals, and William Grant, surety, are held and firmly bound, jointly and severally, unto John I. Adams, Jay L. Adams, William H. Renaud, Albert N. Cummings, Thomas J. Daunis, Francois Justin Gaudé, and Joachim Gaudé, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said John I. Adams, Jay L. Adams, William H. Renaud, Albert N. Cummings, Thomas J. Daunis, Francois Justin Gaudé, and Joachim Gaudé, their heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated the

20th day of April, in the year of our Lord eighteen hundred and eighty.

Whereas the above-named principals having heretofore, to wit, on the 12th day of April, 1880, taken an appeal to the Supreme Court of the United States from and to revise the decree entered on the 3d day
215 of April, 1880, by the circuit court of the United States for the fifth circuit holding in and for the district of Louisiana, in the suit of The New Orleans National Banking Association against the said John I. Adams and others, No. 7925 of the docket thereof:

Now, the condition of the above obligation is that if the above bounden principals shall prosecute their said appeal to effect, and shall answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void, and otherwise to remain in full force and virtue.

(Signed) NEW ORLEANS NATIONAL BANKING ASSOCIATION. [L. S.]
" MRS. ANNA GOODWIN GILMOUR. [L. S.]
" JULIA BERNARD BARNSLEY. [L. S.]
" LUCIAN BARNSLEY. [L. S.]
" GEORGE SCARBOROUGH BARNSLEY. [L. S.]
" WILLIAM WATSON CHRISTIAN & [L. S.]
" HENRY SCOTT GILMOUR, [L. S.]
Ex'rs & Trustees of Estate of Thomas C. Gilmour.
" JULIA GILMOUR. [L. S.]
" F. MASSEY DAWSON, *her Husband.* [L. S.]
" MURRAY GILMOUR, [L. S.]
" By BAYNE & RENSHAW, *Solicitors.* [L. S.]
" C. H. SCHWARTZ. [L. S.]
" GODFREY FORREST REID,
Per C. H. SCHWARTZ. [L. S.]
(Signed) WM. GRANT. [L. S.]

216 Surety accepted.
(Signed) HORNOR.
4, 20, '80.

Bond approved.
(Signed) EDWARD C. BILLINGS, *Judge.*

Agreement as to transcript of appeal.—Filed July 17th, 1880.

U. S. circuit court, district of Louisiana.

NEW ORLEANS NATIONAL BANKING ASSOCIATION
vs.
JOHN I. ADAMS & CO. ET ALS. } No. 7925.

List of documents, &c., to be included in transcript of appeal:
1°. Bill of complaint and Exhibit A.
2°. Cross-bill of Wm. Watson Christian et als.
3°. Pro confesso against A. N. Cummings.
4°. Answer of heirs of G. Barnsley to bill.
5°. Cause set down on answer of heirs of G. Barnsley.

6°. Plea of res adjudicata.
7°. Plea of lis pendens.
8°. Additional plea of lis pendens.
217 8½°. Amendment to plea lis pendens and decision of supreme court of Louisiana annexed.
9°. Reference of pleas to master.
10°. Report of master on pleas.
11°. Pleas set down on master's report.
12°. Answer of T. J. Daunis to bill.
13°. Answer of F. J. & J. Gaudé to bill.
14°. Answer of Jno. I. Adams & Co. to bill.
15°. Exception to master's report on pleas and judgment thereon.
16°. Answer of def'ts to cross-bill.
17°. Plea to part of cross-bill.
18°. Replication of complainant in cross-bill to pleas, &c.
19°. Replication of complainants to def'ts' answer.

Complainant's evidence.

20°. Mortgage from Tucker & Bro. to R. Tucker, dated 24th Feb'y, 1860, at page 151 of record No. 1456 (omit slaves).
21°. Judgment Bank of N. O. vs. Tucker et als., p. 278.
22°. Mortgage certificate at p. 179.
23°. Sheriff's adjudication to A. N. Cummings, p. 160 (omit list of incumbrances).
24°. Exhibit A attached to bill.
25°. Evidence of N. W. Casey & exhibits, p. 148.

Evidence of John I. Adams & Co, def't.

218 26°. Mortgage from Daunis & Mrs. Tucker to Adams & Co., page 31.
27°. Petition of John I. Adams & Co. on mortgage and order of sale, page 1 (omit all exhibits except mortgage at page 31).
28°. Writ of seizure and sale, page 100, and sheriff's return, page 114.
29°. Rule to erase mortgage at page 121.
30° Exception and answer of N. W. Casey, page 142, and admissions of counsel, page 147.
31°. Judgment and opinion on rule to erase, page 216.
32°. All orders, decrees, &c., final and interlocutory.
33°. List of evidence on cross-bill, filed 10th June, 1878, and the documents referred to therein.

It being agreed and understood that any party may bring up any additional part of the record that he thinks hereafter he may require, at the expense of the appellant, and which shall become a part of the record in the Supreme Court.

New Orleans, 23d June, 1880.

(Signed) JOSEPH P. HORNOR,
Solicitors for Defendants.

(Signed) ROUSE & GRANT,
For Appellant.

219 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 218 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial the case of *of* appeal in the case of the New Orleans National Banking Association, for the use, &c., vs. John I. Adams et als., No. 7925 of the docket of said court, as per agreement of counsel herein filed on the 17th day of July, A. D. 1880.

No. of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court at the city of New Orleans this 3d day of August, A. D. 1880.

Thirty-four (34) words erased—null; approved before signing.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 3rd day of August, A. D. 1880.

EDWARD C. BILLINGS, *Judge.*

220 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to John I. Adams, Jay L. Adams, William H. Regnaud, Albert N. Cummings, Thomas J. Dannis, Francois Justine Gaude, and Joachim Gaude, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the New Orleans Banking Association, Mrs. Anna Goodwin Gilmour, Julia Bernard Barnesly, Charles H. Schwartz, Lucien Barnesly, George Scarborough Barnesly, George Reid, by his next friend, Charles H. Schwartz, William Watson, Christian & Henry Scott Gilmour, executors and trustees of the estate of Thomas C. Gilmour, Julia Gilmour, and F. Massey Dawson, her husband, and Murray Gilmour are complainants and appellants, and you and each

of you are defendants and appellees, to show cause, if any there be, why the decree rendered against the said New Orleans Banking Association, for the use, &c., as in said motion & order for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 20' day of April, in the year of our Lord one thousand eight hundred and eighty.

EDWARD C. BILLINGS, *Judge.*

221 (Indorsed) United States circuit court. No. 7925. The New Orleans Banking Association, for the use, &c., complainants & appellants, vs. John I. Adams et als., defendants & appellees. Citation.

Marshal's return.

Received May 10, 1880, by the U. S. marshal, and on May 29th, 1880, I served a copy of *of* the within citation of appeal on John I. Adams, Jay L. Adams, William H. Regnaud, Albert A. Cummings, Thomas J. Dannis, Francois Justin Gaud, and Joachim Gaud, appellees herein, by delivering a copy hereof to Joseph P. Hornor and one to W. S. Benedict, attorneys of record for the aforesaid appellees in person in *in* the city of New Orleans, district of Louisiana.

E. S. CURRY,
D'y U. S. Marshal for District of Louisiana.

Personally appeared before me E. S. Curry, a deputy U. S. marshal in and for the district of Louisiana, and makes oath that he served a true copy of the within citation of appeal on the appellees herein named, as set forth in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal for District of Louisiana.

Subscribed and sworn before me June 12, 1880.

F. A. WOOLFLEY,
Commissioner United States Circuit Court, District of Louisiana.

222 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Albert N. Cummings, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the second Monday of October next, pursuant to a motion and order for an appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the New Orleans National Banking Association for the use, etc., Mrs. Anna Goodwin Gilmour, Julia Bernard Barnesly, Charles H. Schwartz, Lucien Barnesly, George Scarborough Barnesly, George Reid, by his next friend, Charles H. Schwartz, William Watson, Christian and Henry Scott Gilmour, executors & trustees of the estate of Thomas C. Gilmour; Julia Gilmour

and F. Massey Dawson, her husband, and Murray Gilmour are complainants and appellants, and you and John I. Adams, Jay L. Adams, William H. Renaud, Thomas J. Dannis, Francois Justin Gaude, and Joachim Gaude are defendants and appellees, to show cause, if any there be, why the decree rendered against the said complainants and appellants, as in said motion and order for an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 20th day of April, in the year of our Lord one thousand eight hundred and eighty.

EDWARD C. BILLINGS, *Judge.*

223 (Indorsed:) United States circuit court. R. No. 7925. New Orleans National Banking Association for the use, &c., complainants and appellants, vs. John I. Adams et al., defendants and appellees. Citation.

Marshal's return.

Received Aug. 14, 1880, by the U. S. marshal, and on the same day, month, and year, I served a true copy of the within citation of appeal on the within-named Albert N. Cummings, appellee herein, by handing the same to him in person, in the city of New Orleans, district of Louisiana.

E. S. CURRY,
D'y U. S. Marshal for District of Louisiana.

Personally appeared before me, E. S. Curry, a deputy U. S. marshal in and for the district of Louisiana, and makes oath that he served a copy of the within citation of appeal on the appellee within named, as set forth in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal for District of Louisiana.

Subscribed and sworn before me this 14th August, 1880.

T. V. COUPLAND,
Commissioner United States Circuit Court, District of Louisiana.

(Indorsement on cover:) No. 91. The New Orleans National Banking Association, Mrs. Anna Goodwin Gilmour et al., appellants, vs. John I. Adams, Jay L. Adams, William H. Regnaud et al. Louisiana C. C. U. S. Filed October 11, 1880.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 91.

THE NEW ORLEANS NATIONAL BANKING ASSOCIATION ET AL., APPELLANTS,

vs.

JOHN J. ADAMS ET AL.

STIPULATION OF COUNSEL AND ADDITION TO RECORD.

Filed October 29, 1883.

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1 UNITED STATES OF AMERICA.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

THE NEW ORLEANS NATIONAL BANKing Association, for the use, &c., *vs.* JOHN J. ADAMS ET AL. } No. 7,925.

Conveyance by Mrs. Geo. W. Tucker to Thomas J. Daunis, April 1, 1871.

UNITED STATES OF AMERICA,
STATE OF LOUISIANA,
PARISH OF LAFOURCHE.

Know all men by these presents, that, on this, the first day of April, A. D. one thousand eight hundred and seventy-one, before me, Emile E. Le Blanc, deputy recorder, duly named and qualified, in and for the state and parish aforesaid, at my office in the town of Thibodeaux, personally came and appeared Mistress Margaret Stuart Glover, wife of George W. Tucker, of the said par-
2 ish, here present and signing these presents with her, who declared and said that she has this day sold, ceded, transferred, and conveyed, and hereby does sell, cede, transfer, convey, and deliver unto Thomas J. Daunis, of the state and parish aforesaid, here present, accepting and purchasing for himself, his heirs and assigns, all and singular, and without any exception or reservation of any kind—

The undivided half of a certain sugar plantation situate, lying, and being in the state and parish aforesaid, known as the Hornwood plantation, owned jointly with the said Thos. J. Daunis, on the left bank of the Bayou Lafourche, at about four miles below the town of Thibodeaux.

1st. Measuring seven arpents more or less front, by eighty arpents in depth, according to the existing lines; bounded above by the lands below described, and below by the lands formerly belonging to Charles C. Williams, and now belonging to Revierè and Espenau.

2d. Another tract of land adjoining the one just described, measuring two arpents more or less front, by eighty arpents in depth, with a considerable opening of the lines as they recede from the Bayou Lafourche; bounded above by lands formerly belonging to Marcelia Adam, and now belonging to François Gaudé, and below by the lands above described, the two forming one connected sugar plantation, and known as "Hornwood plantation."

3

Also the buildings and improvements thereon; all the mules, cattle, farming utensils, implements of husbandry, growing crop, and everything on and attached to the said plantation, without any exceptions or reservations of any kind. The consideration of the said sale and transfer is the assumpsit which the said vendee, Daunis, hereby makes and takes upon himself, as follows:

1st. Of all the debts and liabilities of the firm of Daunis & Tucker, all well known to the said purchaser, who was managing partner, was alone authorized to contract the same, and the amount of which is known to him.

2d. Of a mortgage debt due to the Bank of New Orleans, amounting in principal *to* the sum of six thousand two hundred and sixty-nine $\frac{50}{100}$ dollars, with such interest as may have accrued thereon to date.

4

3d. Of a mortgage debt due to Jerome Gambert, amounting in principal to the sum of eighteen hundred and fifty-one $\frac{10}{100}$ dollars, with such interest as may have accrued thereon, which debt, however, the said Daunis declares he has already paid.

4th. Of a mortgage debt due Godfrey Barnsley, amounting in principal to the sum of four thousand nine hundred and four $\frac{40}{100}$ dollars, with such interest as may have accrued thereon.

All these mortgage debts being evidenced by a notarial deed passed before J. Kleber Gourdain, recorder of Lafourche, on the 7th of September, eighteen hundred and sixty-seven, recorded and subscribed in book of mortgages No. five, page five hundred and sixty one and sequentes, on the twelfth of the same month and year.

5th. Of a mortgage debt and vendor's privilege due J. Rosémond Le Blanc, for the sum of two thousand dollars, with such interest as may have accrued thereon, which is evidenced by a

deed of sale passed before Emile E. Le Blanc, notary, on
5 the thirty-first of December, eighteen hundred and sixty-eight, inscribed and recorded in mortgage book No. 6 the same day, page one hundred and ninety-six.

6th. Of a mortgage note in favor of John I. Adams & Co., of the city of New Orleans, for a principal sum of thirty thousand two hundred and eighty-nine $\frac{27}{100}$ dollars, with such interest as may have accrued thereon, evidenced by a notarial deed passed before Emile E. LeBlanc, deputy recorder of Lafourche, on the second day of April, eighteen hundred and seventy, recorded and inscribed in book of mortgages "A," page four hundred and forty-four, et sequentes, on the same day.

7th. A lien and privilege in favor of Beattie and Hare for the sum of five hundred and thirty $\frac{20}{100}$ dollars, with such interest as may have accrued thereon.

8th. A lien and privilege in favor of Michel Guillot for the sum of three hundred and forty dollars, with such interest as may have accrued thereon.

9th. A lien and privilege in favor of Wm. Dill for the
6 sum of three hundred and fifty dollars, with such interest as may have accrued thereon.

10th. The delivery and transfer to the said Mrs. Tucker, vendor, of her three several notes to her own order by her endorsed, one for twelve hundred and fifty dollars, payable 1st of January, 1870, one for two hundred and fifty dollars, payable March, 1870, one for and the third for seven hundred and fifty dollars, payable March, 1871, forming together two thousand two hundred and fifty dollars, evidenced by notarial deed and passed before Emile E. Le Blanc, deputy recorder, on the 18th of May, 1869, the delivery and receipt of which notes the said Mrs. Tucker, vendor, hereby acknowledged and gives acquittance and release therefor.

All of which assumptions will now fully appear by the certificate of mortgages hereunto annexed and forming part of this act, which certificate comprises all the mortgages, liens, and privileges inscribed in any office against the property herein conveyed, all of which, except the one designated under number ten
7 herein just preceding this clause, the said Daunis, purchaser, takes upon himself and specially assumes, promising and binding himself against the same to protect and hold the said Mrs. Tucker harmless.

And now come and intervened John J. Adams, of the City of New Orleans, herein acting for the firm of John J. Adams & Co., who does by these presents release and relieve the said vendor, Mrs. George W. Tucker, from all liabilities and indebtedness to the said firm, including the aforesaid mortgage and all advances made to the said Daunis & Tucker, taking and accepting the lien, and stead of the vendee, said Mrs. Tucker, the said Thomas J. Daunis, but this, without releasing, impairing, changing or nova-

ting the lien and privilege, and the mortgage existing and given to secure advances and the aforesaid indebtedness to his said firm.

Now, the said Mrs. Tucker, vendor, assisted and authorized as aforesaid, does hereby declare and acknowledge that she has this day received in cash, for which she gives full release and
8 quittance from the said Thomas J. Daunis, over and above the aforesaid assumpsits, the sum of two thousand dollars in full payment and extinguishment of all the rights, claims, and privileges accorded and granted her by law under homestead and the exemption laws of the said State of Louisiana, and in consequence she does hereby relieve and release the said property and the said Daunis from all rights, claims, or privileges of homestead of exemption, declaring that she has been paid in full and in cash as aforesaid. And the said Mrs. Tucker, aided and empowered as aforesaid by her husband, declares and acknowledges that the said Thomas J. Daunis has rendered a full, complete, and perfect account of his administration as acting partner of the firm of Daunis & Tucker, and in strict conformity to the act of partnership entered into on the twenty-ninth of December, eighteen hundred and sixty-eight; that it results from the said settlement that
9 the said partnership is indebted to the said Daunis in the sum of eight thousand dollars, from which the said Daunis does hereby release and discharge the said Mrs. Tucker as a further consideration of the same and transfer as aforesaid.

And the said parties, partners as aforesaid, do mutually give and grant to one another full, final and complete release and discharge from all claims and demands they may have against one another or against the said firm, growing out of the said partnership, declaring and acknowledging that the said partnership has been fully settled to and including this date, and that all claims and demands of the respective partners are estimated, extinguished, and settled in full, and that the said partnership is now and forever hereafter dissolved and cancelled, without any right, claim or recourse of either party against the other; it being the meaning and intent of the parties to close and dissolve the said partnership voluntarily of their own free will, without any claim or demand against the other of any kind or character whatsoever, and to relieve and release one another in full, as they in
10 fact do, by these presents, without exception or reservation of any kind.

And, furthermore, as additional and further consideration of the sale and transfer aforesaid, in full therefor, in addition to the stipulations which precede, the said Mistress Tucker, authorized and empowered as aforesaid, declares and acknowledges to have received in cash from the said Thomas J. Daunis, the sum of two thousand dollars, for which she gives quittance and release.

The said vendor, Mrs. Tucker, declares herself satisfied with the assumpsit made by the said Daunis, and the mortgages, liens and

privileges existing on the said property to secure the same; and, therefore, neither retains nor reserves either mortgage or privilege, under the aforesaid transfer, other than those already existing as aforesaid.

The United States internal revenue stamps, to the amount of thirty-two dollars, are hereto affixed and cancelled pursuant to law.

This done and passed the day, month, and year first above-
11 written, at my office in the town of Thibodeaux.

In faith whereof, the parties, witnesses, and I, the deputy recorder, have signed these presents, after due reading, in presence of the undersigned, good and competent witnesses.

(Signed) M. S. TUCKER.
GEORGE W. TUCKER.
T. J. DAUNIS.
JOHN J. ADAMS & CO.
L. AMOS ROUSSEL.
A. L. ST. MARTIN.
EMILE E. LE BLANC, *Deputy Recorder.*

RECORDER'S OFFICE,
PARISH OF LAFOURCHE.

A true copy from the records of my office, recorded in conveyance book No. 14, page 1, et seq., on 1st April, 1871. The original act, after due search, could not be found amongst the records of my office, the same being lost or mislaid.

Witness my hand and official seal, at Thibodeaux, La., this 28th of July, A. D. 1875.

[L. S.) (Signed) L. JOLISSAUT, *D'y Recorder.*

Filed July 28th, 1875.
(Signed) A. ROVERA, *D'y Clerk.*

Filed December 7th, 1875.
(Signed) H. FRANKLIN, *Clerk.*

12 CLERK'S OFFICE, *ss:*

I, Francis A. Woolfley, clerk of the Circuit Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing eleven (11) pages form and contain a true and correct copy of the conveyance by Mrs. George W. Tucker to Thomas J. Daunis, April 1, 1871, found in the record of the suit of John J. Adams & Co. vs. Thomas J. Daunis, No. 1,456, 15th Judicial District Court, Parish of Lafourche, on file in the case of the New Orleans National Banking Association, for the use &c. vs. John J. Adams et al., No. 7,925 of the docket of this court.

Witness my hand and the seal of said court, at the City of New Orleans, this 25th day of October, A. D. 1883.

[SEAL.] F. A. WOOLFLEY,
Clerk.

I have no objection to this being filed as a part of the record in U. S. Supreme Court, No. 91, October Term, 1883.

JOSEPH P. HOWARD,
Counsel for Appellee.

Washington, D. C., Oct. 29, 1883.

WM. GRANT,
Of Counsel for Appellants.

(Endorsed on cover:) Supreme Court U. S., 1883, October term. No. 91. The New Orleans National Banking Association et al., appellants, vs. John J. Adams & al. Stipulation of counsel and addition to record. Filed 29th October, 1883.

109-211

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 91.

THE NEW ORLEANS NATIONAL BANKING ASSOCIATION ET ALS., APPELLANTS,

versus

JOHN I. ADAMS, JAY L. ADAMS ET ALS., APPELLEES.

J. D. ROUSE,
WM. GRANT,
THOMAS L. BAYNE,
Attorneys for Appellants.

F. F. Hansell, Stationer and Printer, 30 Camp Street, New Orleans.

Witness my hand and the seal of said court, at the City of New Orleans, this 25th day of October, A. D. 1883.

[SEAL.] F. A. WOOLFLEY,
Clerk.

I have no objection to this being filed as a part of the record in U. S. Supreme Court, No. 91, October Term, 1883.

JOSEPH P. HOWARD,
Counsel for Appellee.

Washington, D. C., Oct. 29, 1883.

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Of Counsel for Appellants.

(Endorsed on cover:) Supreme Court U. S., 1883, October term. No. 91. The New Orleans National Banking Association et al., appellants, vs. John J. Adams & al. Stipulation of counsel and addition to record. Filed 29th October, 1883.

109-21

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 91.

THE NEW ORLEANS NATIONAL BANKING ASSOCIATION ET ALS., APPELLANTS,

versus

JOHN I. ADAMS, JAY L. ADAMS ET ALS., APPELLEES.

J. D. ROUSE,
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Attorneys for Appellants.

F. F. Hansell, Stationer and Printer, 30 Camp Street, New Orleans.

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 91.

THE NEW ORLEANS NATIONAL BANKING ASSOCIATION ET ALS., APPELLANTS,

versus

JOHN I. ADAMS, JAY L. ADAMS ET ALS., APPELLEES.

STATEMENT OF THE PLEADINGS.

The bill filed by appellants in the circuit court avers that Tucker Bros. executed their certain promissory note for $5000, dated February 24, 1860, and delivered the same to the Bank of New Orleans (afterwards converted into the New Orleans National Banking Association), at the same time granting a mortgage on a plantation in Lafourche parish, La., to secure the same, concurrently with three others for a like amount each; that two of these notes were paid, but that the one held by the bank, which fell due February 15, 1861, and the one held by Godfrey Barnsley, which fell due January 20, 1861, were not

paid at maturity; that on the 11th of June, 1867, the Bank of New Orleans obtained a decree of foreclosure against the Tucker Bros., under which the mortgaged property was sold to pay said notes, on the 7th of September, 1867, to Albert N. Cummings, for $13,025; that Cummings, being unable to pay the price of the adjudication in cash, it was agreed between all parties in interest that he should be granted time to pay the price, upon the following terms, viz.: that the sum of $1,851.10 should be paid to one Gaubert, in instalments, on or before March 1, 1869; that he should also pay out of the price the sum of $4,904.40 to Godfrey Barnsley, and, lastly, that he should pay $6,269.50 to the Bank of New Orleans, each sum to bear eight per cent. interest until paid; that this agreement was made before Joseph K. Gourdain, recorder, and ex-officio notary of the parish, on the 7th day of September, 1867, and duly inscribed in the mortgage records of the parish on the same day; and that it contained a clause declaring that the debts due the bank and Godfrey Barnsley were secured by mortgage on the whole of the real estate so purchased by Cummings, with the further stipulation that the original mortgage should also remain in full force and effect, and also to avoid all doubt that a *present mortgage* is declared to exist as resulting from the agreement to secure said debts.

The bill further refers to the said agreement and

annexes the same as an exhibit (see page 5), and it charges that John I. Adams, Jay L. Adams and Wm. K. Renaud, composing the firm of John I. Adams & Co., claim some interest in the property, which, however, was acquired subsequent to the registry of the complainants' mortgage, and is inferior thereto in rank. The bill closes with a prayer for a decree of foreclosure against all parties in interest. Record, page 1.

A cross-bill was filed in the cause by the legal representatives of Barnsley, praying for like relief. Record, page 11.

Cummings failed to answer, and the bill was taken for confessed against him, Record, page 11.

For plea to the bill the members of the firm of John I Adams & Co. aver that, being holders of certain promissory notes made by one Thomas J. Daunis (who had in the meantime purchased the property of Cummings), secured by mortgage upon the property (of a date subsequent to that of complainant), they obtained an order of seizure and sale against Daunis in the district court of the State for the parish of Lafourche, under which the property was sold by the sheriff on the 2d of October, 1875, and bought in by them; that the sheriff refused to complete the adjudication on account of sundry inscriptions of mortgage against said property; that thereupon a rule *nisi* was filed in the cause against the New Orleans National Banking Association and

others, praying that the mortgages described in complainant's bill be cancelled; that the said Banking Association appeared, and in answer to the rule set up the identical matters now set up in its said bill; that the said district court of the State made the rule absolute on the 7th day of December, 1875, and ordered the erasure of complainant's mortgage; that the judgment on said rule was not appealed from with supersedeas and was duly executed. Record, page 8, See copy of rule at page 55.

This plea was overruled on issue joined, and the defendant was given leave to plead either *res judicata* or *lis pendens*. Record, page 15.

Thereupon defendants repeated the same plea, and further averred that complainant had taken an appeal to the Supreme Court of the State from the judgment on the rule, where it was then pending. Record, page 15.

This plea was supplemented subsequently by adding an averment that the said judgment on rule has been affirmed by the Supreme Court of Louisiana. Record, page 22.

The plea as supplemented was then referred to a master to ascertain and report whether it was true in point of fact. Record, page 20.

The master found and reported that the issue made between Adams & Co. and the banking association in the rule was whether the agreement between Cummings and others operated to keep alive

the original mortgage of 1860, and the judicial mortgage resulting from the inscription of the judgment of June, 1867, thereon ; and he further found that the bill in this case seeks to enforce the mortgage resulting from the agreement of September 12th, 1867, and not the mortgages mentioned in the rule. Record, page 20.

To this report the respondents filed an exception in the clerk's office, that the master erred in this, that the bill *does seek to enforce the same mortgages that were cancelled by the judgment on the rule.*

The exception was maintained, *but the plea was overruled.* Record, pages 31, 32.

The defendants, members of the firm of John I. Adams & Co., then answered the bill, admitting the facts stated in the same, but denying the conclusions of law, and they allege as a defence—

1st. That the original mortgage recorded February 24, 1860, was extinguished and satisfied by the sale to Cummings.

2d. That they held a mortgage on the property which they caused to be foreclosed by a suit in the Fifteenth Judicial District Court for the parish of Lafourche, against Thomas J. Daunis, and that they bought the property at a sheriff's sale, made under a writ issued in such suit, free and discharged of the claims of the complainant.

3d. That they have since sold the property to their co-defendants, F. J. and Joachim Gaude, who are now in possession of the same.

4th. That the mortgage of Tucker Bros., of February 24, 1860, *is* barred and extinguished by the prescription of ten years.

5th. That the agreement of September 12, 1867, between Cummings and the banking association, *is* barred by the prescription of ten years. Record, page 33.

F. J. and Joachim Gaude adopt the answer of John I. Adams & Co. Record, page 32.

The pleadings of the parties on the cross bills filed by the representatives of Godfrey Barnsley need not be recapitulated, as they are the same as to the bill. Nor need we recite the evidence, as the facts averred in the bill are admitted by the respondents.

The circuit court heard the cause on the bill, answers, replications and evidence, and dismissed the bill and cross bill, and the complainants in the bill and cross bill have appealed.

ASSIGNMENT OF ERRORS.

1st. The circuit court erred in dismissing the complainant's bill, and the cross bill of the legal representatives of Godfrey Barnsley.

2d. The court erred in overruling the report of the master, and his finding of fact on the question of the truth of defendant's plea of *lis pendens*.

3d. The court erred in dismissing the bill and cross bill after it had overruled the defendant's plea of *lis pendens*.

4th. The court erred in holding that the judgment of the State court on the rule *nisi* cancelled the mortgage resulting from the agreement of September 12, 1867, between Cummings and others.

5th. The court erred in holding that the said mortgage was prescribed.

STATEMENT OF FACTS.

Briefly stated the undisputed facts in the case are as follows:

On the 24th day of February, 1860, Tucker Bros. executed a mortgage on the property in dispute to secure the payment of four promissory notes of $5000 each. Subsequently they paid two of the notes, leaving outstanding two notes held respectively by the Bank of New Orleans and Godfrey Barnsley, which fell due January 20 and February 15, 1861.

In 1867 the Bank of New Orleans brought suit against Tucker Bros. in the district court for the parish of Lafourche, La., and obtained a decree of foreclosure on the note which fell due February 15, 1861, and obtained a decree for the sale of the mortgaged property. This decree was registered on the 22d of June, 1867 and became a judicial mortgage upon the property.

The property was subsequently sold to Albert N. Cummings, by the sheriff, under this decree, on the 7th of September, 1867, for $13,025.

But Cummings was unable to pay the price in cash, whereupon the mortgage creditors, who were entitled to the funds, the debtors and Cummings, entered into an agreement before the parish recorder, who was also an ex officio notary, in which it was stipulated the funds should be distributed among the mortgage creditors as follows:

To Gabert & Richard.....$1851.10
" Godfrey Barnsley..... 4904.40
" Bank of New Orleans..... 6269.50

Time was granted Cummings in which to pay these sums.

The agreement, which will be found at page 5 of the printed record, recites all these facts, and declares that the portion of the price of the sale due to the bank and Barnsley was secured by mortgage on the whole property. And it was additionally stipulated that the original mortgage of February 24, 1860, and the mortgage resulting from the registry of the decree of foreclosure should not be novated or impaired. And to avoid all doubt, said privileges and mortgages were declared to operate as a PRESENT MORTGAGE.

This agreement was recorded in mortgage book of the parish No. 5, folio 561, on the 7th of September, 1867.

Cummings sold the property, on the 29th of December, 1868, to Mrs. Tucker, who assumed payment of the debts secured in the agreement of September 7, 1867.

On the same day Mrs. Tucker conveyed to Thos. J. Daunis an undivided one-half of the property, and the latter also assumed the obligations of the agreement.

Afterwards, on the 2d day of April, 1870, Daunis, by authority from Mrs. Tucker, mortgaged the whole property to John I. Adams & Co., to secure the sum of $38,259.27.

Afterwards, on the 1st of April, 1871, Mrs. Tucker conveyed the other half of the property to Daunis, who again assumed the bank's mortgage.

On the 25th day of July, 1875, John I. Adams & Co. obtained an order of seizure and sale against Daunis, in the district court of the State, upon their act of mortgage, under which the property was sold and purchased by themselves for $17,519.

At the sale the sheriff read a certificate of the recorder of the parish (as required by the law of Louisiana in all judicial sales), which recited only the mortgage resulting from the inscription of the decree of foreclosure in favor of the bank of June 28, 1867; but it made no mention of the mortgage resulting from the inscription of the agreement of Cummings of September 7, 1867.

The sheriff refused to make a deed to Adams & Co. unless they would first pay into his hands the several sums secured by the Cummings mortgage agreement.

Adams & Co. thereupon took a rule against the

New Orleans National Banking Association, successor to the Bank of New Orleans, the recorder, the sheriff, Goodrich & Co., R. & E. L. Tanner, J. Gaubert and M. Richards, to compel the sheriff to make a deed, and for the cancellation of the judicial mortgage of the bank, resulting from the inscription of its *judgment June 28, 1867*, which, from the mortgage certificate, appeared of record unsatisfied, and alleging that the sale under the same to Cummings had extinguished it. Record, pages 87 to 92.

With the rule was filed the mortgage certificate above referred to. Record, page 55.

The mortgage certificate will be found at page 38 of the record.

N. W. Casey, as receiver, filed an exception and answer to the rule, in which he denied the jurisdiction of the court, and admitted that the Bank of New Orleans obtained a judgment against Tucker Bros., June 17, 1867, upon the mortgage of February 15, 1860, which was recorded as a judicial mortgage, as alleged in the rule, and averred that it had never been paid. Record, page 58.

The rule was submitted, and decided by the court December 18, 1875, adversely to the bank. The finding of facts, made by the judge, copied at page 59 of the record, recites that the bank set up and urged the judgment of June 17, 1867, as a defence; but the court decided that the sale to A. N. Cummings of September 7, 1867, under that judgment,

extinguished it and the mortgage resulting from its inscription. Judgment was entered accordingly, making the rule absolute, erasing the mortgage.

The agreement of September 7, 1867, creating the mortgage sought to be enforced by the bill in this case, was not mentioned in the rule, the mortgage certificate or the judgment of the court, nor was it offered in evidence on the trial of the rule by the defendant.

Before the bill was filed an appeal was taken by the receiver of the banking association from the judgment on the rule, and the appeal was pending in the Supreme Court of this State when the various pleas were filed by the defendants; and at the time this case was decided by the circuit court the cause was pending in the Supreme Court of the United States on writ of error.

The Supreme Court of Louisiana affirmed the judgment on the rule, but this court dismissed the writ of error for want of jurisdiction. Casey vs. Adams et als., 102 U. S. 66.

The several pleas of *lis pendens* filed by the defendants to the bill, having been overruled, the circuit court decided the case solely upon the merits of the controversy.

ARGUMENT.

Three questions are presented for the consideration of the court:

1st. Did the agreement of September 7, 1867, between Albert N. Cummings and his creditors, constitute a mortgage upon the property in dispute?

2d. Was that mortgage cancelled and extinguished by the judgment of the State court upon the rule *nisi*?

3d. Was the mortgage prescribed or barred by the statute of limitations when the bill of complainants was filed, and the defendants impleaded?

We shall argue these questions in the order stated.

I.

We admit that the original mortgage of 1860, and the judgment thereon of 1867, were extinguished by the sale to Cummings on the 7th of September, 1867, and that the State court properly decreed their cancellation on the rule taken for that purpose.

The bill necessarily recited the transactions which took place prior to the sale, but it avers in the fifth clause that the claims of the bank and of Godfrey Barnsley were secured *under the registry of the agreement with Cummings of September 7, 1867*, by the vendor's lien and mortgage, in preference to the subsequent lien of John I. Adams & Co.

The complainant's whole case was made by the bill to depend upon the rights granted in the agreement, which outranked those acquired by the defendants by four years' prior registry.

Was this agreement a mortgage?

It shows that a sale of property was made to Cummings for a certain sum of money, for the payment of which time was granted; that one of the creditors, to whom the price was due, should have a first mortgage on the three lower arpents of the tract of land. By another clause it was agreed that the claims of the creditors, under their original mortgage and decree therein, should not be novated, but should remain in full force; and in another clause it was declared that "for the purpose of avoiding all doubts, the said privileges and mortgage *are* hereby recognized as operating on said property in the proportions aforesaid, and to secure the debts stated as aforesaid, with the rank above stated."

What debts were referred to? Surely none other than the unpaid price due by Cummings to the several creditors.

Unless it can be shown that some particular form of expression is necessary to create a mortgage under the law of Louisiana, this agreement must be held, by all rules of construction of the English language, to grant a mortgage.

The Civil Code of Louisiana, article 3278, declares that "a mortgage is a right granted to the creditor over the property of the debtor for the security of his debt"

Article 3290: "The conventional mortgage is a contract by which a person binds the whole of his property, or a portion of it only, in favor of another to secure the execution of some engagement." * *

Article 335: "A conventional mortgage can only be contracted by an act passed in the presence of a notary, or by an act under private signature." * *

These are the only provisions relating to the form of mortgages to be found in the law of Louisiana.

And the courts of the State have uniformly accepted all written instruments as mortgages which show an intent to grant them.

In the case of Ellis vs. Sims, 2 A. 251, the following writing was held to be a mortgage and enforced:

"STATE OF LOUISIANA,

"Parish of Concordia, April 18, 1843.

"One day after date I promise to pay E. Ellis or order $724.22, being for work done on my land, situated on the Mississippi river, in said parish of Concordia, bounded by lands of E. P. King above and below, and back by lands of the United States, which land is improved by said levee. I hereby acknowledge, agree and consent that the said Ellis has a privilege and mortgage for the securing the payment of said sum of money.

"JOHN C. SIMS."

But for some expressions to be found in the opinion of Mr. Justice Marr, who was the organ of the Supreme Couat of Louisiana in affirming the judgment on the rule to erase mortgages, we should allow the agreement to speak for itself.

The learned justice admits that the district court

made the rule absolute, and ordered the erasure of the several mortgages specified in the rule, but he overlooked the fact that the Cummings agreement was not mentioned in the rule, or at issue in the answer of the receiver of the banking association, or put in evidence.

The only question, therefore, before the court was whether the judgment cancelling the original mortgage of 1860 and the decree therein was correct. The judgment was affirmed simply on the ground that the sale extinguished both the mortgage and decree, and then the agreement could not keep them alive.

While our reason is not convinced by the arguments of the learned justice on this point, we bow with all due respect to the decree of the court. But we feel at liberty to discuss the criticism expressed in the opinion touching the agreement, as all that is said about that instrument, except so far as it affects the original mortgage and judgment, is *obiter*.

The rule and answer to the rule put at issue simply the question, whether the mortgage of 1860 and the decree thereon of June, 1867, were extinguished by the sale to Cummings.

The judgment of the district court was upon the same issue, for it simply made the rule absolute.

The master reports as matter of fact that the issues were confined to these two questions, and that the agreement was *not* at issue.

No proof was offered at the hearing on the bill even tending to show that the issues tried were other than those disclosed in the rule. In point of fact the agreement was considered solely as to its effect upon the original mortgage and judgment. Only so much, therefore, of the opinion of the learned justice as relates to the effect of the agreement upon the old mortgage and judgment, bears upon the issue in this case. Whether the agreement operated itself as a mortgage was not an issue before the State court, and its discussion in that aspect was unnecessary to the decision. What was said by the learned justice must be considered as merely a casual expression of his individual opinion on a question of law and fact not before the court.

He considered the agreement as "anomalous and in some respects extraordinary;" but an inspection of the instrument shows that it granted a mortgage in the plainest terms to secure the price of the sale. The clause stipulating that the old mortgage and judgment should remain in force might have been omitted, since it has been held to be without effect; but the presence of a void stipulation should not vitiate the valid parts of the instrument.

The appellants are no doubt bound by the decree of the Supreme Court of Louisiana, so far as it determines, as matter of law, that the agreement did not revive and keep alive the original mortgage and

judgment, for that issue was presented in the case before the court for decision.

But we submit that the expression of Judge Marr, in the course of his opinion, that the agreement of Cummings did not in itself constitute a new mortgage, was *obiter*, and should not control this court in the construction of that instrument.

The judgment of the State court, as we shall hereafter show, operates as an estoppel only upon the matter actually at issue and determined in the former action.

Though those matters are not at issue here, it is claimed that the remarks of the court in respect to the character of a piece of the evidence used in the former case should control this court when that evidence is made the basis of a different cause of action.

On principle it seems to us clear that the comments of a court upon evidence before it in a former case upon different issues, cannot be considered as an estoppel in fact or in law in another suit between the same parties.

We humbly submit that the question whether the agreement of September 7, 1867, did or did not grant a new mortgage to the complainants is still open and undecided. Judged by the Civil Code and the decision of the Supreme Court in Ellis vs. Sims, 2 A. 251, it is as good an instrument of mortgage as was ever made in Louisiana.

II.

The judgment of the State court does not constitute an estoppel by former adjudication against this action.

The rule to erase mortgages averred that, "the "Bank of New Orleans, in suit No. 578 on the "docket of the late Third Judicial District Court, "recovered judgment on the — day of June, 1867, "against Tucker Bros., then owners of Homewood "Plantation, for $5000, with eight per cent. inter- "est from 15th February, 1861, and five per cent. "attorney's fees, with special mortgage recognized "on whole nine arpents, by eighty deep, as per act "before J. K. Gourdain, recorder, dated 24th Feb- "ruary, 1860, inscribed on that day and never rein- "scribed; that said judgment was executed, the "property seized and was sold and adjudicated "September 7th, 1867, to A. N. Cummings, for "$13,025, and the title of Tucker Bros. divested; "that the effect of the adjudication purged, erased "and cancelled the junior mortgages; that all said "mortgages should be erased," etc.

The New Orleans National Banking Association excepted to the jurisdiction of the court, and averred that it obtained the judgment against the Tucker Bros., as alleged, and caused the same to be recorded so as to bear as a mortgage upon the plantation; that the judgment has never been paid, and the mort-

gage resulting from said judgment is a good and valid lien upon the property.

The issue thus made was whether the judgment of June —, 1867, had any legal existence, and bore as a mortgage upon the property.

The court decided that the judgment and the mortgage resulting therefrom were both extinguished by the sale, on the ground that the agreement of September 7th, 1867, did not keep them alive. But no issue was made as to the new mortgage granted by the agreement itself, and none was decided.

The judge, in his opinion, says the agreement was in evidence before him, but it does not appear that the complainant offered it; yet it is claimed that because it was in evidence and was commented on, and refused effect as to the old mortgage and judgment, that it cannot be made the basis of this suit, though, for aught that appears in the record, it was offered in evidence by the plaintiffs in rule.

Complainant did not claim any benefit from the agreement in his answer to the rule, or set it up as a defence; and it is not averred or shown that he used it in evidence or referred to it in argument. He might, it is true, have set up the agreement as a defence: but he did not debar himself by his failure to do so, from afterwards seeking relief upon it or setting it up as a defence to another suit.

The universal rule is, that a former judgment op-

erates as an estoppel only on the precise questions determined in the former suit between the same parties. Cromwell vs. County of Sac, 94 U. S. 351.

5 Mees. & W. Exch. 109.

It is the decree, not the opinion of the court, which constitutes *res judicata*.

The opinion of a court casually expressed upon matters not at issue decides nothing, and is only entitled to consideration so far as it may be good law. Unless such an opinion be supported by authority and sound reason, it is entitled to but little weight. Judges who write opinions in a great number of cases are not themselves willing to be bound by the expressions they may use in commenting on collateral questions.

We therefore, submit that this court is at perfect liberty to follow the deliberate and well considered opinion of the Supreme Court, in Ellis vs. Sims, by the light of which, the agreement in question is clearly a new mortgage, even if it did not have the effect to keep the old mortgage and judgment alive.

III.

We admit that the mortgage of 1860, and the judgment thereon in 1867, were extinguished by the sale to Cummings, and it is immaterial whether they were prescribed or not.

But the record shows that the mortgage resulting from the Cummings agreement of September 7, 1867, was not prescribed.

The bill to foreclose was filed in the circuit court on the 28th of June, 1876.

The date of service of subpœna does not appear, as by agreement the subpœnas were not copied into the record. Appearance, however, appears to have been entered by the filing of pleas for defendants on the 3d day of November, 1876. See record, page 8.

The answers subsequently filed aver that the agreement and the inscription thereof were and are prescribed, no re-inscription thereof having been made within ten years from its date, as required by the laws of Louisiana.

Process must have been served on defendants prior to November 3, 1876, or if not their appearance stands in lieu of process.

The mortgage was therefore not prescribed when suit was brought. The defendants, however, claim that while complainant was in court prosecuting his rights against them, those rights were lost pending the action to enforce them by the omission of the complainant to do some act outside of the case.

Ten years had not elapsed since the date of the original inscription, when the defendants acquired their rights in the property, and when the suit was brought. They had notice of the mortgage and were bound by the *lis pendens* created against them by the bill filed in the circuit court.

In Patterson vs. De La Ronde, 8 Wallace 292, this court held that notice to a third party of the

existence of a mortgage dispenses with its re-inscription.

This decision was modified by the court in the subsequent cases of Cucullu vs. Hernandez, 103 U. S. 105, and Watson vs. Bondurant *ib.* 281, out of deference to the opinions of the Supreme Court of the State.

We therefore frankly concede that as the adjudications now stand the pendency of a suit in the courts of Louisiana to forclose a mortgage does not, as to third persons, dispense with re-inscription.

But are the parties to the suit, who were sued before prescription accrued, third persons? We claim that they are not. This point has never been settled by any decision of this court or of the Supreme Court of the State.

But if it had been decided by the State tribunals that the pendency of a suit in a *State* court does not dispense with re-inscription of a mortgage in litigation, even as between the parties to the cause, the decision would not control this court when considering the effect of a bill filed in the Circuit Court of the United States, upon the parties and the subject matter of the suit. The question does not involve a rule of property, but one of judicial procedure governed by the common law.

We must then look to that law for a solution of the question.

The general rule is well settled that the filing of

a creditor's bill and the service of process create a lien in equity upon the property of a judgment debtor, and is in itself notice to all the world of the lien. Miller vs. Sherry, 2 W. 237.

Not only are the parties defendant bound, but third persons, if they purchase the property, *pendente lite*, take it subject to the lien. Tetlow vs. Colfield, 93 U. S. 163.

In equity, liens unknown to the statute are created, sustained and enforced, as in cases of the sale of land where a lien exists in equity for the payment of the purchase price. 1 Story's Eq. Jur., section 506.

But they become operative as against third persons only from the date of filing a bill to enforce them. Ibid., sect. 405.

The right which a complainant acquires by the filing of a bill and impleading a defendant in a federal court, is clearly derived from the common law, In such cases this court has uniformly refused to follow the decisions of the State courts. Chicago vs. Robbins, 2 Blk. 418.

The equity jurisdiction of the courts of the United States, says the Supreme Court in Noonan vs. Lee, ibid. 499, is derived from the constitution and laws of the United States, and the powers and rules of decision are the same in all the States. Town of Venice vs. Murdock, 92 U. S. 494.

Since it is clear that the filing of a bill to enforce

a lien, whether statutory or equitable, operates at common law as *lis pendens* as to third persons independently of any registration, it must have the same effect upon the defendants named in the bill.

The Supreme Court of Louisiana held opinions in harmony with the common law on this question as to cases pending in the State courts, in Long vs. French, 13 L. 260.

But whatever may have been said in subsequent cases, as to the necessity of reinscription to bind third persons, we submit that a party to a suit to foreclose a mortgage in a federal court is not such a third person as can plead the failure to reinscribe the mortgage *pendente lite*.

Appellants therefore pray that the decree appealed from may be reversed and set aside, and that a decree may be entered as prayed in the bill and cross-bill.

Respectfully submitted,

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109-211

FILED
OCT 26 1883

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 91.

THE NEW ORLEANS NATIONAL BANKING ASSOCIATION ET AL., APPELLANTS,

vs.

JOHN I. ADAMS & CO. ET AL.

Appeal from the U. S. Circuit Court for the District of Louisiana.

Brief for Appellees.

STATEMENT OF THE CASE.

In the statement of the case made in the brief for appellant there is this error of fact on page 11, viz: "Before the "bill was filed an appeal was taken by the receiver of the "banking association from the judgment on the rule." The fact is, that the appeal was not taken by the banking association from the judgment on the rule in the State court until after we had filed our plea of *res adjudicata* to appellant's bill. The bill was filed 28 June, 1876, (p. 1,) our plea of *res adjudicata*, setting up the judgment of the State court, was filed 3 November, 1876, (p. 8,) and the appeal was not taken from the judgment of the State court until 28 November, 1876.

I.

The whole controversy in this case seeks to revive issues that have already been definitely settled between the parties by a court of competent jurisdiction, and affirmed, so far as the question of jurisdiction is concerned, by judgment of this court.

Adams *vs.* Daunis, 29 La. Ann., 315.
Casey *vs.* Adams, 102 U. S. Rep., 66.

And if this Court should now say that any of these issues are still open, then we can have no better argument to offer than that contained in the opinion of the supreme court of Louisiana in the case above cited, and which was between these same parties.

In that opinion it is held that the agreement of 7th September, 1867, between Albert N. Cummings and his creditors did not constitute a mortgage upon the property in dispute. The language is: "It is clear that Cummings did not grant "any mortgage on this property."

Adams *vs.* Daunis, 29 La. Ann., 321, (Rec., p. 27.)

Consequently, it is needless to ask whether that *alleged* mortgage, which was held to be *no* mortgage, was ever cancelled and extinguished; but it is apparent from the decision that all mortgage claims of the appellant were decided to be cancelled and extinguished and the property held to have passed to us by the sheriff's sale free from all such, and from all other liens and mortgages.

II.

The agreement of 7th September, 1867, if it was a mortgage, was prescribed by the lapse of ten years, and by want of reinscription prior to the filing of our answer to the bill in this case, in which the plea of prescription is set up, viz.,

on 13th February, 1878, (p. 33;) and such prescription is not interrupted by the pendency of the judicial proceedings, as claimed by the appellant.

It is decided by the supreme court of Louisiana, in Watson *vs.* Bondurant, (30 La. Ann., p. 1,) and in many other cases there cited, (p. 11,) that neither notice nor even the pendency of a suit on the mortgage dispenses with reinscription; and this was recognized as establishing "a rule of real property "in the State of Louisiana" and "binding on this court" by the decision in the case of Bondurant *vs.* Watson, 103 U. S. Reports, p. 289.

III.

As to whether the same matters were at issue in this case as were settled in the case of Adams *vs.* Daunis, (29 La. Ann., 315,) although the master in the lower court found that they were not, his finding was overruled by the court, which decided that the facts set up in our plea of *lis pendens* were true in fact, (record, p. 32;) hence, when the matters pleaded were finally determined in Adams *vs.* Daunis, they became *res adjudicata* as to the issues here, and the language of the supreme court of Louisiana very positively settles this.

Our opponents urge that the agreement of 7th December, 1867, was not at issue in that case. They made the same point in Adams *vs.* Daunis, but it was there fully disposed of as follows:

"Counsel for appellant suggest that the agreement of 7th "September, 1867, was not discussed in the court below. "*We find that it was introduced in evidence by them*, and "we do not see how the judge could have avoided giving it "the effect to which it was entitled or deciding that it had "not the effect claimed for it. It is clearly not a mortgage;